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THE BENCH AND THE BAR.

In all the states of our Union, by their respective constitutions, an absolute equality of rights, civil and political, is guarantied to every citizen. Ample provision, also, is made by law in conformity with those constitutions, for the establishment and maintenance of learned and independent judiciaries, and for suitable courts for the administration of justice. When we add to this, the right to have all questions of fact tried and determined by a jury, it might seem, that all necessary provision had been made for the security of all, in the enjoyment of their rights of person and of property. But this impression vanishes, upon considering the actual application of the law to its practical uses. If the injured individual must, in every case, in proper person, seek the appointed tribunal, and there present and make out his case, and demand the redress which by law is provided, there would, indeed, be little of the actual, to compare with the theoretical equality of our law and constitutions. If the weak in body and mind, the aged and infirm, the timid, the artless and unlearned, when oppressed by the strong, the daring, the unprincipled, the cunning and skilful, must go in person to the temple of justice, and there, meeting their oppressors face to face before a court and jury, invoke, with their own unaided strength and skill the justice due to their respective cases, and which the law proposes to administer; there is great danger, that the practical application of the rule, however perfect in theory, instead of affording redress, would aggravate existing grievances. It is quite certain, the farther the parties should proceed, thus unequally matched, surrounded by the intricacies of the law and of judicial proceedings, the more complete would be the triumph of the strong and skilful over the weak and ignorant. Those who had taken advantage of their superiority, out of court, for the

purposes of oppression, would find the same qualities still more available before judicial tribunals; and the result would be, that courts of law, though, nominally, temples of justice, would become mere instruments of oppression in the hands of the astute and fraudulent. All this seems plain to us, of the present day, to whom courts and judges and lawyers, are objects of daily observation; and the history of civilization shows, that the same necessity presented itself, and found its remedy, in the earliest dawn of civil liberty and municipal law. In the Roman republic, before the introduction of the laws of the twelve tables, procuratores and oratores, and in England, long before the Norman conquest, and before the date of any authentic history, narratores, countors, serjeants, and apprentices at law, were permitted to appear for parties in all civil suits, and to be heard in their behalf. The very existence of liberty and law, and the administration of justice in courts, required, and brought forth an order, or profession of men, devoted to the acquisition of the learning and skill, which would qualify them to aid parties in the prosecution and defence of their rights, according to legal forms; or, as it is expressed in an ancient English statute, some four hundred years ago, men "skilful in the laws of the land, who serve the common people, to declare and defend actions in judgment, for those who have need of them, for their fees."

When, therefore, our ancestors left their homes in the east, to take possession of this western wilderness, they brought with them, as a part of the common law, well settled and understood, the right to appear and be heard, in all civil suits, before all courts, by attorneys and counsel. But although such was their right by inheritance, they were not anxious to avail themselves of it. They thought, and wisely, that lawyers were a sort of superfluous luxury, which, amongst the other privations resulting from their poverty, they might well dispense with. Besides, those pious and excellent men came here, burning with the holy desire and hope to establish a politico-ecclesiastical commonwealth, in which there would be little occasion to resort to laws of human invention. Accordingly, in the first years of the experiment, all matters of controversy, whether civil or criminal, were brought before assemblies of the people, or political magistrates, and there settled by popular vote, without much reference to any law, except the common law (not of England), but of common sense. At length, however, this favored community, having grown in numbers faster than they had grown in grace, it became necessary to establish tribunals, which could be applied, with greater promptness, to punish the sins and redress the grievances of the people. Still, there seemed to be no haste to invite from across the water, or to educate amongst themselves, men who should devote themselves to the study and practice of the law, as a vocation. The lawyers in England generally adhered to the established church, and such would have been very unwelcome visit-

ers amongst the puritan non-conformists of the colonies. This general tendency of the profession, in England, may be considered as one cause of the disinclination amongst the pilgrims to raise up a similar class of men on this side of the water. Those who held bishops and surplices in utter abomination, might well feel some reluctance to found or foster a profession, whose favorite maxim is, *stare decisis.* Besides, it must be conceded, notwithstanding our admiration of the self-sacrificing virtue of our ancestors, that some of them began, soon after their arrival, to manifest a little ambition, of a holy sort perhaps, but in things not strictly spiritual. Having led their followers into the wilderness, like their Judaico-Egyptian prototype, they wished, like him, also to be lawgivers and law expounders. They had tasted the pleasures of power and influence, as leaders and guides of a sect who were suffering for righteousness' sake, and they were unwilling to see springing up in the state a new power or principle, in the shape of political or judicial establishments, which might modify, control, and rival their own importance and preëminence. Their experience of the misconduct of Thomas Morton, in the Plymouth colony, probably the first who attempted to support himself by the mere practice of the law, amongst the pilgrims, (as early as 1625,) and who was sent a prisoner to England in 1628; and their difficulties with Thomas Lechford, a much worthier and more learned lawyer, but an episcopalian, and therefore odious to the puritans, and who returned to England and published a book, designed to prejudice the people and government there against the colonists; all combined to give color to their preconceived aversion to the introduction of such a profession amongst themselves. Besides, it is plain, that so far as the colony of Massachusetts is concerned, they had the fixed design that their newborn liberties should not be fettered and restrained by the common law of old England.[1]

Influenced by these feelings, the general court of Massachusetts, in 1663, "ordered, that no person who is an usual and common attorney in any inferior court," (meaning inferior to the general court,) "shall be admitted to sit as a deputy in this court;" — thus making the profession and practice of the law a disqualification to represent the people in their legislative assembly; for the word attorney is here used, as it has been since in most of the states, to mean all lawyers, as well counsellors as attorneys.

A short time after this, Edward Randolph, who had come to Massachusetts to act as the shameless tool of those in England who were unfriendly to the colonists, and who, as secretary under the infamous Andros, participated in the violence and abuse of power during the reign of James II., after stating to his correspondent in England, that there were only two attorneys in Boston, requests him to send

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[1] See American Quarterly Register, vol. xiii. p. 417. Alden Bradford's Account of Judges, &c.

over "two or three honest attorneys, if any such in nature." This, though an affirmative rather than a "negative pregnant," implying the bad reputation of the lawyers then extant, must, nevertheless, be read the other way, and is better than any compliment from such a quarter.

But a kindlier spirit sprang up, in due time, towards the law and lawyers, as the necessities of the people began to demand their services. They realized that a class of men, learned in the laws, and skilled in the practice of them, was indispensable to the actual enjoyment of those equal rights and privileges which really belonged to all classes in the community. They saw and felt, that the poor, weak, and ignorant could in no other way but by hired counsel, stand upon equal ground in a court of justice, and have their cases stated and argued with equal ability, learning and eloquence, as their more rich, learned, and powerful adversaries. Yielding to the force of these views, they passed, in Massachusetts, an act, in 1715, "that no person shall entertain more than two of the sworn allowed attorneys at law, that the adverse party may have liberty to retain others of them to assist him, upon his tender of the established fee, which they may not refuse."

Thus at this early period, when lawyers were few in the commonwealth, they were perceived to be so essential to the proper administration of justice, that the legislature made a most efficient provision, not only to prevent one party, by his superior wealth, from retaining all the members of the profession, and thus overwhelming his adversary; but by compelling those, not retained by one party, to serve the other, upon the tender of the usual fees, they prevented any individual of weight and influence from persuading those lawyers, whom he could not, by law, retain and pay, not to engage for and serve his adversary.

At the commencement of our revolution, it was stated by Burke, on moving his "resolutions for conciliation with the colonies" (1775) in parliament, as a circumstance which "contributed to the growth of an untractable spirit" in America, "that in no country in the world is the law so general a study. The profession itself is numerous and powerful, and in most provinces it takes the lead. The greater number of the deputies sent to the congress were lawyers." And it was mentioned as idle to strive to cheat or deceive us, as to our constitutional and legal rights, as Englishmen, "when every village" amongst us "had its lawyer," and a majority of every legislative assembly was composed of members of that profession. Thus, it appears that our ancestors, always true in their "sober second thoughts," not only outgrew their early prejudices, but made honorable amends for their former distrust and disfranchisement of the legal profession.

The necessity and utility of the legal profession having been recognised by legislative enactment, and the members of it restored to an

equality of rights and privileges with their fellow-citizens, — and, by the law of the land, all parties litigant having a right to be heard in all courts, by counsel, — we propose to consider the nature and extent of this right.

In the first place, as the judges of our courts hold their offices and discharge their functions by virtue of provisions in the constitution of our commonwealth, and of laws enacted in conformity with those provisions, counsel, also, derive their rights and authority from the same high sources; the latter, acting within proper limits, standing at the bar in aid of their clients, are surrounded and protected by constitutional guaranties, in the same sense, and to the same extent as the former, though elevated to the bench and charged with the high duties and responsibilities of presiding in those tribunals. We intend, therefore, in what we are about to say, to consider the bench and the bar as coördinate branches of our judicial system, both equally essential to the due administration of justice; and we shall speak of their correlative rights and duties.

The great business of courts is, to hear parties, their allegations, evidence, and arguments; and as this whole matter is managed through the agency of counsel, the right of counsel is, in fact, the right of their clients to be heard. Still this right is not without limitation and qualification. All organized bodies must of necessity have established rules and modes of proceeding in the transaction of the business before them. To these, counsel must conform. The presiding judge, being charged with the maintenance of good order, and with the proper despatch of business, he, like all other presiding officers, is to be treated with respect and decorum, in all proceedings before him. The rules of law, as to the kinds of evidence and the manner of bringing it before the court, or jury, must also be observed. These limitations and qualifications being satisfied, in all other respects counsel may conduct their causes according to their own discretion, for the good of their clients. As to the sort of evidence, (it being competent by the rules of law,) and its quantity, the length of time occupied in the argument, whether to the court or jury, and the number and kind of arguments, — all these are matters for the sound discretion of counsel, and they may and must decide upon them, having in view nothing but the true interest of those, whose agents and representatives they are. As to all these, strictly, the court have no right to interfere, even by way of advice or suggestion.

Keeping these general principles in mind, it may be well to consider some of the ways in which the rights of counsel may be, perhaps sometimes are, violated.

The judges being responsible for the despatch of the business of their courts, and bound to give all parties a hearing in their turn; and most of our courts being greatly pressed and overburdened with causes; it is natural that the presiding judge should at all times feel anxious to make progress with all reasonable speed in the matters

before him. This feeling he brings with him as he ascends the bench in the morning; it remains with him, and does not leave him when he goes to his chambers at evening; it may be said to be the *evil genius* of a judge, which haunts him in his dreams. But if he do not confine it to his own breast, if he suffer it to break out in expressions of impatience, or a desire of greater speed in the despatch of business, he is guilty of violating the rights of counsel, and of those who, by their aid, are seeking justice before him. It is of no avail, that he gives these hints of haste and impatience in the mildest language and in the kindest manner; he has no right to let it be known that he has any such feelings. His whole business is with the subject-matter in hand, the case then before him; and his whole aim should be, to do justice in that. And there is no other way to accomplish this, but to give a full and patient hearing to the parties, through the whole trial. It is unjust, as well as unkind, to give pain and uneasiness to those engaged in the cause, by manifestations of a desire to hasten them, and get rid of them. In all suits, one of the parties must be vanquished; and if he feels that he has had a full hearing, without restraint or improper haste, he is satisfied. Nothing short of this can or ought to satisfy him. It is true, in most trials, much more time is consumed than to the judge seems to be necessary. But this is no affair of his; he has no responsibility in this part of the matter. He must keep out illegal and irrelative matter; but within the rule of competency, the discretion of counsel is to govern, as to amount of matter and length of time. Counsel often produce more evidence upon a point, or insist more upon it in argument, than the judge thinks necessary or advisable, and he often gives such hints to the counsel; but upon these matters the counsel, who have become familiar with all parts of the cause, can decide much better than the judge, who is new in it, and if they could not, it is their right and their duty to decide, in spite of the opinion of the judge.

In thus giving fair scope to counsel, according to their just and constitutional prerogative, it may be, that business will not be despatched as the court might wish, and other parties, who are waiting to be heard, may desire; but as to this, also, the judge is not responsible. His duty is, to do rightly and well, what is done,—and if he be obliged to leave much undone, for want of time, he is innocent. "*Judex damnatur, cum nocens absolvitur;*"—but no blame can come upon him, merely because he has not been able to go through with the whole docket, and ascertain which party, in each case, is innocent. It is the duty of the legislative department of the government to see to it, that the bench is supplied with judges, sufficient in number, to administer justice, "without delay," as in the constitution is provided.

When a judge so far forgets the dignity and decorum pertaining to his office, as to apply stimulants to counsel, to urge them forward in the business before the court, professedly upon grounds of public

necessity, we ought not to presume that other motives really actuate him. But it behooves a judge, who feels within himself a temptation thus to trespass, to search his own heart, lest, peradventure, some part of his motive be, to promote his own convenience, to finish a term, and secure a longer vacation.

In the progress of a trial, the judge is apt to suppose, that he discerns which party has the right on his side. This is a dangerous feeling for him to entertain. Sitting in the sacred seat of justice, and being human, there is danger that he will lose his impartiality, and begin to lean towards that side where he has already discovered the truth to be. Having thus prejudged the case, he may be influenced by it, unconsciously, to rule out, or rule in, evidence, or to put questions, and make suggestions, favorable to his view of the case, and to the great injury of the other side, which, after all, will most likely turn out to be the right. For it is perfectly certain, as the aspect of a case is shifting with every new piece of evidence, and almost with every word that comes out, any opinion concerning the merits in the midst of the hearing, would be more likely to be wrong, than right. In most cases, it is the erroneous view, which is the most obvious, — the correct one is to be dug out and brought to light. It is truth which resides in a well, and it is error which generally covers that well. Besides, as the object of the whole trial is to discover which party has the right, the judge not only cannot know, but he ought not to wish to know, until the end, which has it. It is his safety, and the safety of the parties, that he should studiously keep himself ignorant, and so unbiased as to this vital point, until the close. And yet, from a neglect of these obvious principles, or rather, from the difficulty of acting in conformity to them, especially with some minds and peculiar temperaments, most of the unpleasant passes between judges and counsel arise. Having made up a hasty opinion as to the right side of the case, the judge grows impatient of the testimony and arguments of those who are wrong; he begins to interrupt, to hurry, and bustle, and complain of great waste of time, and manifest in every possible manner, his desire to cut short those, who, in his judgment, are struggling for what they ought not to obtain. It is not uncommon to see a judge thus giving battle to counsel through a day, or even two, — and yet, after a long struggle, being honest and willing to change his opinion, upon new light of sufficient force, he veers around, and is as much inclined upon the other side. Judges with such ill-balanced minds and of such wayward tempers, are the *cruces legales*, upon which counsel are stretched and tortured, for the trial of their faith and patience.

It has happened, sometimes, that a judge becomes so strongly impressed with the belief, that a particular side of the cause is right and ought to prevail, that he cannot restrain his actions nor conceal his bias. If he hears the counsel, upon the side which he has decided in his own mind to be wrong, pressing his arguments to the

jury with an earnestness and success, which seem likely to carry them in the wrong direction, he interrupts the speaker and throws in some countervailing suggestions to take off the edge of the reasoning of the advocate. Such conduct can hardly be reconciled with honesty in the judge; — still cases have occurred, where it has arisen from mere inadvertence on his part — his feelings getting the start of his sense of propriety and duty.

There is another fault akin to the one just spoken of, incident to the bench. The judge assumes to interrogate a witness, either breaking in upon the examination by counsel for that purpose, or putting his questions after the one or the other party has ceased to examine the witness. In so doing, he proceeds upon an erroneous notion of the duties of his office. He supposes, either that it is his duty to aid the parties in bringing their evidence before the jury, or that it is his duty, as judge, to know all that can be known as to the case before him. In both these suppositions, he is mistaken, so far as civil suits are concerned. He not only is not bound, but he has no right to assist either party in any particular. In assisting one, he obstructs and injures the other, and so does injustice. And as to his obligation to know all the facts which may exist in a case, when the trial is by jury, he is subject to no such duty, and has no such right. It is his duty to take the case, or rather let the jury take it, as the parties by their counsel choose to present it; if all the facts are not sifted from the witnesses, he must not interfere. This part of the business of trials belongs to the bar, and with them the bench may safely leave it; — they are bound to leave it there, whatever may be their feelings upon the subject. The court, strictly speaking, have as much right to call witnesses for a party as to draw out facts, or aid in drawing out facts, from those actually called. The judge has a right to understand what is testified or stated in a cause, and for this purpose, if he has not distinctly heard or comprehended what has passed, he may ask to have it repeated; but for this he should, in strict propriety, address himself to the counsel, that they may procure the repetition or re-statement for his benefit. In a trial by jury, the strict and plain duty of the judge is, most obviously, to take the case as it comes along, ruling all matters of law as they arise, keeping full minutes of all that is said and done, and neither to ask nor desire more than what is presented to him. What thus comes out, by the efforts of the parties, constitutes the case and the whole case.

In the argument of cases before the court, in the absence of a jury, there is seldom occasion to regret unpleasant occurrences between the bench and the bar. Sometimes, however, even there, impatience is manifested. Occasionally, also, a judge, indulging an unwise ambition, interrupts the arguing counsel with questions, and asks a solution of difficulties in the case, by way of showing that he has already plunged deeper into the mysteries of the matter than coun-

sel who have devoted themselves to its examination, perhaps for years. This is a sorry way of displaying superior discernment. The true way, the only way for judges to discharge their duty in such a hearing, is, instead of interrupting counsel, or turning over the pages of the docket, or the papers in the next cases, in their impatience or listlessness, to take careful minutes of the arguments urged by counsel, and of the cases cited by them, that they may not shoot so wide of the mark, as they sometimes do, in speaking of what passed at the hearing. It is not only a proper respect towards counsel to do this, but it is, in reality, desirable that the court, in deliberating upon the case, should be possessed of the points relied upon by counsel, whether the same were tenable or otherwise. It has been said, that the supreme court of the United States affords the most perfect example of decorum and propriety, in the hearing of causes. There no interruptions, no impatience, no fatigue or inattention on the part of the court, annoy the counsel. They are permitted to state their points and maintain them, in their own way. In the history of that court, only one instance has been heard of, in which they have deviated from their usual, untiring indulgence. In that case, after a most learned and eloquent advocate, now departed, had spent three days in opening an argument, roving through all creation, from the fall of Adam to that of Niagara, not having yet disposed of first principles, the late chief justice of that court ventured to say to him, on the morning of the fourth day, after apologizing for making the suggestion, "there are some things which the court may be presumed to know."

In the demeanor of the judges towards the members of the bar, as to mere manners and mode of address, there is not much which is objectionable, in our highest courts. There is not, to be sure, that high-bred civility and amenity which are observable in the English courts; but some part of this difference is owing to the effect of our republican institutions upon the general manners of society. It is also true, occasionally, that a judge, fatigued with official labors, or influenced by an unhappy, physical or nervous temperament, accosts a member of the bar in a rude, coarse, or harsh manner, more particularly unseemly, as coming from so high a functionary, and sometimes, in the hurry of business, when many are pressing to be heard, the judge cannot spare time to be civil; but these things, happily, are not of very frequent occurrence.[1]

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[1] It is worthy of remark, in the judicial history of the union, that of the four cases of impeachment, the whole number which have been brought before the senate of the United States, the only two of any importance, and the only cases which were really tried, originated in alleged misconduct of judges towards counsel. In the impeachment of Judge Samuel Chase, in the fourth article, it was alleged, "that the conduct of the said Samuel Chase was marked by manifest injustice," &c.

"3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel," &c.

"4. In repeated and vexatious interruptions of the said counsel, on the part of

So many are the ways in which judges can interfere in the progress of a trial before a jury, and give a direction to it for or against a party, and so dangerous is such a power in human hands, that many have suggested the expediency of changing, to some extent, our mode of managing a trial by jury in our New England courts. Indeed, already in some of the western and southern states, a radical change has been introduced. Their republican jealousy of official influence and interference long ago decided, that judges should have nothing to do with the facts of a cause. Instead of permitting them, as with us, and in England, to charge the jury by a recapitulation of the evidence and facts, in those states, the judge is forbidden to speak to the jury upon the facts in any way whatever, and he is not permitted to state the law to them, except upon those points upon which counsel have requested him so to do, in order to raise the point for decision by the whole bench. Whether or not this is an improvement in the mode of trying causes before a jury, we have not here space and time to consider; we may, perhaps, resume the discussion of the subject hereafter; in connection with other topics touching judicial proceedings.

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the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted," &c.

These proceedings were alleged in the impeachment to have taken place in the trial of "a certain James Thompson Callender for a libel on John Adams, then president of the United States," at Richmond in Virginia, in the year 1800. The trial took place before the senate in February, 1805, and is remarkable as exhibiting a most splendid array of genius and eloquence, both on the part of those who managed the impeachment in behalf of the house of representatives, and on that of the counsel for the distinguished defendant. No display of forensic talent and skill can be compared with it during the last hundred years except the trial of Warren Hastings, and that of the Queen Consort of Great Britain. It is farther remarkable, that although Judge Chase was acquitted by a majority of the senate, upon five out of eight of the articles of impeachment, he was voted to be guilty by a majority upon three of the articles, one of which was the fourth, charging him with misconduct towards counsel, as stated above.

The other case was that of Judge James H. Peck, who was accused of having imprisoned and fined Luke Edward Lawless, a counsellor at law, for an alleged contempt of court, without any lawful right to do so. The senate acquitted him by a majority of one vote.

In both cases, those who voted to acquit probably did so, upon the ground that no corrupt motive or wicked intent was sufficiently made out. As to both, there could be little doubt, that they were honest judges, intending to do their duty and no more, but exhibiting a zeal and haste, somewhat indiscreet. A vote of two thirds being required to convict in cases of impeachment before the senate of the United States, the respondents in both the above cases were acquitted.

RECENT AMERICAN DECISIONS.

Circuit Court of the United States, Massachusetts, March 19, 1842, *at Boston. In Bankruptcy.*

In the matter of Benjamin B. Grant.

It seems, that a person who has been declared a bankrupt, under the late act of congress, may enter into business and hold property, subject to the contingency of obtaining a discharge.

The court has no authority to order an allowance to the bankrupt for the support of himself and family, but it is competent for the assignee to make such allowance, not exceeding the sum of three hundred dollars; and he may also allow the bankrupt any reasonable sum for taking charge of the property.

In general, the husband becomes entitled to the personal property belonging to the wife, at the time of her marriage, unless his marital right is excluded by some express or implied trust; and his creditors may take it in execution or satisfaction of their debts.

Such a trust may be expressly created, or it may be implied from the nature of the gift, or from other attendant and conclusive circumstances.

Gifts after marriage, by third persons, may be expressly given for the sole and separate use of the wife, and if the husband consents to her receiving them, he and his creditors are bound by the trust.

In equity, the husband may make gifts to his wife of personal ornaments or jewelry, for her sole and separate use, which will be good against his personal representatives, in case of his death; but not good against his own power to reclaim them during his life, nor good against the right of his creditors to take them in satisfaction of their debts.

Mourning rings given by third persons to the wife, since her marriage, are purely personal, and cannot be touched either by the husband or by his creditors.

A parent may make gifts to his children, which are proper and suitable in his circumstances and condition; if they are not so, they enure to the benefit of his creditors; but if the gifts have been purchased in part by third persons, the assignee, under the bankrupt law, can only claim the amount paid by the father.

Benjamin B. Grant, a bankrupt, filed in the district court his petition, as follows:

"And now, Benjamin B. Grant respectfully represents to this honorable court, that on the second day of February last past, and at the time of filing his petition, he was possessed, in his individual capacity, of the sum of twenty-two hundred and fourteen dollars and seventeen cents, in cash, as set forth in his schedule of individual property, annexed to said petition. That he was at that time, and has ever since been entirely out of business, and without the means of daily support. That his family consisted of himself, wife, and two sons of the ages respectively of seventeen and twenty years. That they were, at the time of filing said petition, and have ever since been at board, paying therefor the sum of twenty-one dollars by the week. That from the filing of said petition to the fifteenth day of March following, the day when your petitioner surrendered his property, in compliance with the order of this honorable court, he was compelled to provide for the necessary support of his family, for the space of six

weeks, at the rate aforesaid, and having no other means, he paid therefor from out of said sum of twenty-two hundred and fourteen dollars and seventeen cents the sum of one hundred and twenty-six dollars; and your petitioner further states, that his wife is possessed of a watch of about the value of fifty dollars, presented to her by the petitioner about ten years since. That she has likewise several mourning rings and pins, and a few other articles of jewelry, of the value of about twenty-five dollars, some of which were given her by friends, and others by the petitioner some years since; and one a mourning ring of the value of about five dollars, given her by the petitioner nearly two years since. And your petitioner further states, that his sons have each a gold watch of the value of about fifty dollars, which were purchased about two years since, with money given by a friend, and with about twenty-eight dollars given to each by the petitioner, out of his private cash. And your petitioner further states, that the assignee of his estate, appointed by this honorable court, demands of him the payment of said sum of one hundred and twenty-six dollars, and requires the delivery to him of said watches and jewelry in the possession of the petitioner's wife and children, as aforesaid. Wherefore your petitioner prays this honorable court to order and direct said assignee to forbear and relinquish said demand of payment of said sum of one hundred and twenty-six dollars, and that said sum may be allowed your petitioner. And further that your petitioner's wife and children may be permitted to retain their said watches and jewelry respectively."

To this petition the assignee filed no answer, submitting himself to the order and decree of the court in the premises. Upon the hearing, the district judge ordered that the following questions be adjourned into the circuit court, to be there heard and determined, namely: 1. Whether, upon the facts stated in said petition, any, and if any, how much of said sum of one hundred and twenty-six dollars shall be allowed to the petitioner? 2. Whether the jewelry and watch of the petitioner's wife shall be retained by her? 3. Whether the watches of the petitioner's sons shall be retained by them respectively?

The questions now came on to be argued. *Dehon*, (with whom was *C. G. Loring*,) in opening the case, said the first point in the petition was, for allowance for money expended in the necessary support of the petitioner and his family. As soon as the decree of bankruptcy was made by the court, all the property of the bankrupt was divested from himself, and vested in an assignee as soon as one was appointed. This related back to the time of the petition, and the effect was, that all the property of the petitioner passed from himself at the moment of filing the petition. Unless, then, some provision was made for him, he would in certain cases be entirely destitute. And there was an opinion sometimes expressed, that the petitioner could not enter into business or hold any property until he receive his discharge,

which could never take place until several months after he was declared a bankrupt.

STORY J. I find nothing of that sort in the law. I know of no reason, why the bankrupt may not enter into business and hold property, subject of course to the contingency of obtaining a discharge; for if the bankrupt fails to obtain a discharge, *all* his property will at last be subject to the claims of all his creditors.

Dehon further argued the other questions, but not at great length; and the opinion of the court was immediately pronounced by

STORY J. in substance, as follows: In regard to the first part of the petition, respecting an allowance to the petitioner for the support of himself and his family, the court has no authority to interfere in the matter. The law is express, that all the property of the bankrupt shall be surrendered, with certain exceptions, which are specifically set forth. By the proviso containing these exceptions, in the third section of the act, the assignee is to designate and set apart "the necessary household and kitchen furniture, and *other articles and necessaries* of such bankrupt, &c., not to exceed in value, in any case, the sum of three hundred dollars." Now, under this provision, it is competent for the assignee to make the allowance sought for in the present case; but it can be allowed on no other ground than as a part of the three hundred dollars mentioned in the law.

Loring. There is one ground in the case, which should have been stated in the petition, and that is, that the petitioner makes this claim as compensation for taking care of this property, between the time of filing the petition and the decree of bankruptcy.

STORY J. That is another and a distinct question. Undoubtedly the assignee may allow the petitioner or any one else a reasonable sum for taking charge of the property.

Loring. Will your honor allow us to amend the petition?

STORY J. That can be done hereafter in the district court, to which the case will be sent.

STORY J. then proceeded to give his opinion upon the other questions, and said; In regard to the watch and jewelry, the rule in bankruptcy is precisely the same as it is in equity. In the first place, as to the personal property belonging to the wife at the time of her marriage, it may be generally stated, that the husband, under and in virtue of the marriage, becomes entitled to it, unless his marital right is excluded by some express or implied trust. No matter, how the property has come to the woman before the marriage, whether by gift or by purchase, by gift of her friends, or by purchase from her own funds, unless at the time of the marriage it stands affected by some trust for her sole and separate and exclusive benefit, it will belong to

the husband. It may be affected by an express trust, as by the provisions of a settlement, or by a trust deed, or by the will of a third person; or the trust may be implied from the very nature and character of the gift itself. If there be no such trust, then the husband, immediately after the marriage, may appropriate the property to his own use; and his creditors may take it in execution or satisfaction of their debts.

When and under what circumstances a trust, created either expressly, or by implication, before marriage, may be said to remain unextinguished by and after the marriage, is a matter in some cases of considerable nicety. But in all the cases, however varied, the same general principle prevails, which is, to ascertain, whether the nature of the trust, which was originally created, in whatever manner it was so created, is by intendment of law a subsisting trust to continue upon and after the marriage, or not. And it by no means necessarily follows, because the gift before marriage was for the sole and separate use of the woman, that the trust will continue after the marriage, and remain unextinguished. Every thing must here depend upon the character and extent of the trust, according to a just interpretation of its terms, if created by express written documents; or if implied, upon the nature and necessary objects of the gift or bounty, whether they are purely and peculiarly personal to the lady, or not.

Personal property, although given to a woman for her sole and separate use before marriage, necessarily belongs to her in absolute propriety and title, and she has the absolute power to dispose of it, as she pleases, while she remains unmarried. That power ceases upon her marriage; and the same absolute right of property and ownership therein then becomes vested in her husband, unless indeed it was originally given in trust for her sole and separate personal use after the marriage, and without any right of interference of her then intended husband, or of any future husband. Such a trust may be expressly created, or it may be implied from the nature of the gift, or from other attendant and conclusive circumstances. But it cannot be implied from doubtful circumstances, or from facts, which are equally reconcilable with the supposition, that she might have, and should have a right, to part with the same in favor of her husband upon the marriage.

Gifts made after marriage by third persons may also be expressly given for the sole and separate use of the wife, independent of her husband; and when so given, if the husband consents to her receiving the gifts, he and his creditors are bound by the trust. But the nature of the gift by a third person may equally as clearly establish the intent, that it is to be in trust for the sole and separate use of the wife during the marriage, as if it were positively so expressed; and then the trust will equally attach to and regulate the gift, and bind the husband and his creditors. Neither of them can dispose of any such gift; but it remains the sole property of the wife under the trust,

whether it be express or be implied. Nothing can be more clear, than that property, held in trust by the husband, is not subject to the debts of the husband, or liable to his creditors. The trust adheres to the property throughout for the benefit of the wife, or other person, who is beneficially entitled to it.

But gifts made by the husband to the wife after and during the marriage admit of a different consideration, with the exception of her wearing apparel. They are not strictly at law capable of taking effect; for the husband and wife are, in contemplation of law, but one person, and are therefore incapable of contracting with or making gifts to each other. In equity, however, it is otherwise; and the husband may make gifts to his wife of personal ornaments or jewelry for her sole and separate use, which will be good against his representatives in case of his death; but not good against his own power to reclaim them during his life; nor good against the rights of his creditors to take them in satisfaction of their debts; for here the rule is, that the husband must be just, before he is generous. So if the husband dies insolvent, the creditors have a right to take such gifts in satisfaction of their debts. But if his estate is solvent, then although, in strictness, the creditors may take such gifts in satisfaction of their debts, yet they are not bound to do so; and if the creditors do take them, then the wife will be entitled to be repaid the full amount out of the other assets of the husband; for these gifts are good against the representatives of the husband; and even he himself, since they are of the nature of paraphernalia, cannot dispose of them after his death, but only during his lifetime.

To apply these principles to the circumstances of the present case. All the gifts made by the husband to the wife since the marriage, including the watch, and excluding her personal apparel, belong to the creditors, and must be inventoried as a part of his estate divisable among them, if they insist upon their extreme right, as I should hope they will not.

In regard to the mourning rings given by third persons to the wife since her marriage, they are, from their very nature and character, purely personal, and for her sole and separate use, as memorials of the dead and also of the affection of the living. They are sacred, and cannot be touched either by the husband or by his creditors.

In regard to the watches of the petitioner's sons, if given to them by persons other than their parents, there is no doubt, that they can retain them. If given to them by their father, then the question will depend upon circumstances. If the gift is appropriate and suitable to their condition in life, it will be the property of the sons. If, however, the gift is an unsuitable one, one which the circumstances of the father will not justify, then, in legal contemplation, it is no gift at all; but the transaction will give rise to a suggestion of fraud, and the creditors can take them. I know of no rule of law or of equity, which denies to a parent the right to make gifts to his child-

ren, which are proper and suitable in his circumstances and condition; but if they are not so, the father being insolvent, and the gifts being large, then they enure to the benefit of the creditors, even although there was no intention on the part of the father to defraud.

Loring. I should be sorry to have the court misunderstand the facts in the present case, although they might not affect the general principles just laid down. But I ought to state the fact, that the petitioner was insolvent at the time when these watches were purchased.

STORY J. It is not so stated in the petition.

Loring. No, sir, because it was not apprehended, that the point would come up in this aspect.

STORY J. That makes a difference in the present case. An insolvent person has no right to spend much in articles of mere ornament for his children. But here the assignee can only claim the amount, which was paid by the petitioner towards the purchase of his sons' watches.

Loring. This case was made up for the purpose of presenting the question, as to who had the right of *property* in the watches. It seemed to me plain, that the *property* in them was in the children, although it might affect the discharge of the petitioner.

STORY J. Certainly; the property is in the children, but the amount, which the father has paid for them, must be paid to the assignee. If it is not paid, the assignee can petition the court, setting forth the facts, and asking for a sale of the watches, unless they are redeemed by a payment of what the father advanced in their purchase.

The learned judge, in conclusion, said the property in this case was small, although important principles were involved, and he expressed an earnest wish, that the wife might be permitted by the creditors to retain those articles, which, by law, must be given up to them.

The following order was thereupon directed to be certified to the district court:

1. That the petitioner is entitled to an allowance of the said sum of one hundred and twenty-six dollars, or any part thereof, solely in virtue of the third section of the act of congress of the 16th of August last past, establishing a uniform system of bankruptcy, and as a part and parcel of the allowance thereby required to be designated and set apart by the assignee as necessaries for the said bankrupt, not exceeding in value and amount the sum of three hundred dollars; and is not otherwise entitled to the same. But the assignee is at liberty to make such reasonable allowance to the bankrupt for the custody and safe keeping of his property, between the time of filing of his petition for the benefit of the act and the assignee's demanding and receiving the

same under the proceedings in bankruptcy, as the assignee might reasonably make and allow to any third person for the custody and safe keeping thereof.

2. That the watch of the wife and any jewelry given to her by third persons before the marriage, or by her husband either before or since the marriage, pass to the assignee as part of the property of the bankrupt, to which his creditors are entitled. But jewelry given by third persons to the wife since her marriage as personal ornaments, and mourning rings given to her by third persons since the marriage, as personal memorials, belong to the wife for her sole and separate use in equity, and do not pass to the assignee under the bankruptcy for the benefit of the creditors.

3. That the watches of the sons, under the circumstances stated in the petition, belong to them as their property. But nevertheless, if the petitioner was insolvent, when he applied a part of his own money to purchase the same for his sons, had no right so to do against the claims of the creditors; and that in equity, therefore, if the petitioner was so insolvent, the sons must account to the assignee for the amount of the money of the petitioner so paid towards the purchase of the watches. But if the petitioner was not then insolvent, and the donation on his part was made bonâ fide, and the donation was suitable to his rank in life, condition, and estate, then it was good and not within the reach of the creditors, or in fraud of their rights under the bankruptcy.

In the matter of James Vila.

The district court of the United States has authority to order the sale of the whole or any part of the property of a bankrupt, by his consent, even before the declaration of bankruptcy.

The creditors must have due notice of any application for a sale, so that they may appear and show cause against such sale, or for a postponement thereof.

Such sale, if directed by the court, should be made by a commissioner; the time and place of the sale should be fixed by the court and duly advertised, and the conveyance should be made by the bankrupt to the purchaser in the form prescribed by the commissioner.

A petition was filed in the district court by James Vila, setting forth, that on March 11th he filed in this court a petition to be declared a bankrupt; that at the time of his bankruptcy he was seized and possessed of certain real estate and personal property, which was specifically set forth; that it would be for the benefit of the said estate, and of all parties having interest therein, that the same should be sold, transferred and assigned, inasmuch as it would be necessary to expend large sums of money in order to preserve the same from deterioration and waste, and if the time of the sale was postponed until an assignee of said estate should be appointed, the same could not be sold except at great loss and disadvantage. Wherefore the

petitioner prayed the court to pass an order for that purpose, according to the provisions of the act of congress.

No opposition was made to the petition. At the hearing, the district judge made an order, that the question, whether upon the facts set forth in said petition, the said James Vila, or any other person, might be empowered to sell and convey the property mentioned in said petition, or any part thereof; and if so, in what manner the same should be done, be adjourned into the circuit court, to be there heard and determined.

The petition and questions now came on to be argued; and were accordingly argued by *Francis C. Loring* for the petitioner.

Story J. I have no doubt whatsoever of the authority of the district court to order the sale of the whole, or any part of this property, in the present stage of the proceedings in bankruptcy, in its discretion, if it will, in the judgment of the court, be beneficial to the creditors, and is assented to by the bankrupt. The authority results from the general jurisdiction of the court as a court of equity sitting in bankruptcy; and it becomes the duty of the court, from the moment, that the property is submitted to its custody, under the proceedings in bankruptcy, to take due order for its preservation, and to turn it to the best account for the creditors. No one could well doubt this, if the property were perishable; and quite as much injury might result, if it were, in the interval, subject to great depreciation from other causes. I say, that the sale may be made with the consent of the bankrupt; for, as he has not as yet been decreed to be a bankrupt, it would seem unfit to exercise the authority without such consent, until the property is devested from him under the decree declaring him a bankrupt. It is necessary, however, that the creditors should have due notice of this application, before the sale takes place, so that they may appear and shew cause in the district court against any sale, or for a postponement thereof; and doubtless the best mode of giving notice to the creditors would be by advertisement in some public newspapers, a sufficient time before the sale to enable them to act, if they see fit, in the premises.

The sale, if directed by the court, should, as I think, be made by a commissioner appointed by the court, and not by the bankrupt. The commissioner would naturally seek the aid and service of the bankrupt and of the creditors to assist his own judgment, not indeed as a matter of strict duty, but of convenience and propriety. The time and place of sale should be fixed by the court and duly advertised; and the conveyance should be made by the bankrupt to the purchaser or purchasers, in the form prescribed by the commissioner, and with his sanction and approbation as a party thereto, with the proper recitals. I shall direct an order to be sent accordingly to the district court, certifying this opinion. The following order was accordingly sent:

Circuit Court of the U. States, Massachusetts District. In Bankruptcy. March 19, 1842. *In the matter of James Vila, petitioner.* Upon the question certified and ordered to be adjourned into this court by the district court, to be heard and determined, it is hereby ordered and decreed to be certified to the district court, as follows: That it is competent for the district court, sitting as a court of equity in bankruptcy, to authorize and decree a sale to be made of the property mentioned in the said petition, or any part thereof, as the district court may, in its discretion, deem for the interest of the estate. The sale is to be made at public auction, at such time and place as the said court may direct, by a commissioner to be appointed by the court for that purpose. That the creditors, who have proved their debts, and all other creditors, who shall prove their debts, are to have notice, by a publication in some newspaper or newspapers designated by the court, of the time and place of such intended sale, that they may appear and show cause, why the sale should not be made, and apply to the court for a stay or suspension thereof. That the deed to be executed to the purchaser shall be executed by the said Vila in due form of law, and shall be in such terms and with such covenants as the commissioner shall advise and direct; and that the commissioner shall also be a party to the said deed and execute the same, and that the same shall contain a recital, that the sale has been made by him, under the authority of the court, and has been approved by him, and that the proceedings under the sale have been in all respects conformable to the decretal order of the court.

In the matter of Jonathan H. Cheney.

One, who has been declared a bankrupt, is not entitled, as of course, to be discharged from imprisonment under an execution, which issued and was served upon him, and under which he was committed, before the petition in bankruptcy was filed.

But when the bankrupt has obtained his certificate of discharge, he is entitled to be released from imprisonment for the debt by the district court of the United States, and also by the state courts.

Whether the certificate of discharge relates back to the time of the commencement of the proceedings, and renders an intermediate imprisonment unlawful, thereby founding an action for false imprisonment — *Quære.*

All attachments of the property of the bankrupt upon mesne process, after the commencement of the proceedings in bankruptcy, are avoided by the decree of bankruptcy, the property of the bankrupt being devested out of him and vested in the assignee, when appointed, by mere operation of law.

Whether the bankrupt obtains a certificate of discharge or not, the property passes to the assignee, and is distributable among his creditors.

An attachment upon property under mesne process is not, in the strict sense of the law, a *lien* on the property, although it bears a resemblance to it.

When a bankrupt is confined in close custody, he may be produced in court by a writ of *habeas corpus*, whenever his presence is necessary for further proceedings in bankruptcy, before the court or a commissioner thereof.

This was the case of a petition by Jonathan H. Cheney to the district court of the United States, in which he set forth, that on the

eighteenth day of December last past, he was committed to jail in the city of Boston, on an execution sued out of the court of common pleas for the commonwealth of Massachusetts, holden at Boston aforesaid, in and for the county of Suffolk, by one Edward Flood, of said Boston, hair dresser. That on the said eighteenth day of December, one Frederick Kidder, of Cambridgeport, in said district, became bail for the petitioner, and that afterwards, to wit, on the first Tuesday of March instant, the petitioner was, by a decree of this honorable court, declared to be bankrupt, on his petition, duly filed. That the ninety days, for which by the laws of Massachusetts poor debtors may be bailed for the jail limits, expired on Friday, the 18th of March instant, and the said Kidder then surrendered the petitioner to close jail in said Boston, wherein the petitioner was then confined; that he was, and would be, thereby prevented from attending to the property belonging to his creditors in bankruptcy, and rendering any assistance to his assignee, or preparing for his own examination, as by law is required. Whereupon he prayed to this honorable court, that such relief might be granted to him as should to the court seem fitting to his case, and moreover, that the keeper of the jail in Boston, and the sheriff of the county of Suffolk, and his deputies, as well as the said Flood, be by said court ordered to discharge said petitioner, or cause said petitioner to be discharged from said confinement and jail; and that the petitioner might have such further and other relief in law and equity, as to this honorable court might appear meet.

Upon hearing the petition, the district court passed a decree, that the following questions be adjourned into the circuit court of the United States, to be there heard and determined, namely: "Whether the said sheriff and his deputies and the keeper of the said jail and the said Flood, or any or either of them, shall be ordered to discharge the said Cheney from confinement in said jail; and whether any and what other relief shall be granted to the said petitioner?"

The case came before the circuit court, and was argued by *Edward G. Loring* for the petitioner, and by *A. H. Fiske* for the creditor.

Story J. The short state of the case is this. The petitioner, Cheney, was committed to gaol on an execution issuing against him from the state court of Massachusetts, in favor of the execution creditor, Flood, on the 18th of December, 1841. On the same day he gave bond, with sureties, in conformity to the state laws, to surrender himself to close gaol within ninety days, if the execution were not otherwise discharged.[1] On the eighth day of March, 1842, upon his petition, Cheney was decreed to be a bankrupt; and he has since

[1] See Mass. Revised Laws, 1835, ch. 97, § 63.

been surrendered, in discharge of his bond, and is now in close gaol on the execution. The prayer of his petition is, to be discharged from his imprisonment, or to have other relief, adapted to his case, in order to enable him to act in and submit to all proper proceedings under the bankruptcy.

The question, then, turns upon this, whether the bankrupt is, immediately upon his being decreed a bankrupt, entitled, as of course, to be discharged from imprisonment under an execution, which issued and was served upon him, and under which he was committed before the petition in bankruptcy was filed. The argument is, that his personal presence and assistance are necessary to enable the assignee to wind up his affairs, as well to accomplish the purposes of the act, by enforcing his attendance and examination upon interrogatories, under the proceedings in bankruptcy. And it is said, that in England, under the bankrupt system, the bankrupt is held entitled to a discharge from imprisonment on execution for a limited period, to accomplish these very objects. But it is to be taken into consideration, that this authority is derived, not from general principles, but from the positive provisions of the statutes of bankruptcy.[1] No correspondent provisions exist in our statute. And the question, therefore, is reduced to this; whether the district court, sitting in bankruptcy, and having the full powers of a court of equity in all cases of bankruptcy, has authority, in virtue of that jurisdiction, to order the discharge of the bankrupt in this stage of the proceedings. I say in this stage of the proceedings; because it would be a very different question, if the bankrupt had obtained his certificate of discharge from all his debts; for then he would be entitled to be released by the district court, by injunction or other process, as well as by the state court upon a writ of habeas corpus, from farther imprisonment; and any subsequent imprisonment of him for the execution debt, if discharged by the certificate, would be illegal, and subject all the parties concerned therein to an action for false imprisonment.

My opinion is, that no such right or jurisdiction attaches to the district court to order the discharge of the bankrupt from the execution, in the present stage of the proceedings. This is not the case of a debtor in execution under process from any court of the United States, over which the court may possess a power (I do not mean to say, that, if it were, it would, under the circumstances of the present case, make any essential distinction,) to prevent its process from being used oppressively, or abused contrary to the general requirements of the laws of the United States. But, here, the execution is from the state court, and the party stands committed under that execution; and he must be treated, notwithstanding his intermediate liberty, upon giving bond, to be at large within the gaol limits, to have been upon

[1] See act of 5 Geo. II, ch. 30, § 5. Bac. Abridg. Bankrupt I. Act 4 Geo. IV., ch. 41, § 119.

his surrender at all times in custody, under and in virtue of that execution. A debtor in execution is not less in custody upon execution, who is at large within the prison limits, under bond for the liberty of such limits, than if he were in close custody. In each case he may commit an escape; and if he goes beyond the gaol limits, having given bond, it is an escape, which is a breach of the bond, for which he and his sureties are liable. It is not like the case of bail upon mesne process, where the debtor, although in one sense in the custody or power of his bail for the purpose of a surrender, is deemed for all other purposes lawfully at large. Certainly the courts of the United States have no authority to intermeddle with state process, except in cases, where, either expressly, or by necessary implication, such an authority is given by law. The state sovereignty is supreme within its own sphere; and the process thereof must have full effect and operation, until displaced by some other constitutional authority, which controls or qualifies it.

Now, upon what ground can it be said, in this case, that the bankrupt has a clear title to be released from imprisonment? He has not as yet obtained any certificate of discharge from the debt or his other debts. *Non constat*, that he ever will obtain such a certificate. If he never does obtain it, he must still remain liable for the debt, and be bound by the execution to satisfy it. How then can he now be entitled to be discharged from imprisonment under the execution, since the debt is not satisfied and discharged, and it rests in contingency, whether it ever will be by any proceedings under the bankruptcy? The case is not so strong as that of an arrest in execution, issued after the proceedings in bankruptcy have commenced, and are in progress; and yet it might not perhaps, in such a case, make any difference in the application of the doctrine, unless, indeed, where the bankrupt was at the time of the arrest in attendance upon the court, or going to or returning from the court; for then, like the parties and witnesses in common suits in other courts, the bankrupt would be entitled to the common privilege and protection granted by law to all such persons, *eundo, morando, et redeundo.*

The case, too, is not affected by the same considerations as apply to attachments of the property of the bankrupt, made after the commencement of proceedings in bankruptcy upon mesne process, or upon execution; for in such cases, clearly upon principle, (whatever may be the rule in cases of prior attachments, on which I give no opinion) all such attachments are avoided by the decree in bankruptcy, by relation from the time of filing the petition; and all the property then possessed by the bankrupt is devested out of the bankrupt, and vested in the assignee, when appointed, by mere operation of law, from the same period. And it is wholly immaterial, as to the invalidity of such attachments, whether the bankrupt subsequently obtains a certificate of discharge or not, since in either event the property is devested out of him and passes to the assignee, and is distributable among his

creditors. The attachment cannot and ought not to be permitted to create any obstruction to the full exercise of the powers and authorities of the courts in bankruptcy over the property; and the court may by injunction prohibit any interference of the officer and attaching creditor therewith. An attachment upon property under mesne process is not, indeed, in the strict sense of the law, a fixed lien on the property, although it may in some respects bear an analogy or resemblance to it. It is but a mode of executing process, giving contingent rights and contingent interests, and liable to be affected or displaced by many other subsequent operations. But from the moment a petition in bankruptcy is filed, the property of the bankrupt is, in contemplation of law, surrendered by him to the custody of the court; and the court will not permit its rights or duties or functions in regard to it to be interfered with or controlled by private creditors.

But it is asked, how, if the bankrupt is confined in close custody, he is to be produced in court, whenever his presence is necessary for farther proceedings in bankruptcy, before the court or a commissioner thereof? The true answer is, by a writ of *habeas corpus*, which the court is competent to grant, in virtue of its general powers, for the purposes of justice; and when these purposes are answered, the party is, *toties quoties*, to be remanded to the lawful custody of the gaoler. It may be inconvenient; it may be dilatory; it may be expensive to resort to this course; but the inconvenience, if practically found to be great, may be overcome by an act of congress. At present, I do not apprehend, however, that much practical inconvenience will arise under this head. In the first place, the creditor will not be permitted to prove the debt in bankruptcy, unless he consents to discharge the bankrupt from custody; and, indeed, the fifth section of the act of congress of 1841, ch. 9, contemplates the proving of the debt in bankruptcy to be a waiver of all right of action and suit against the bankrupt, and a surrender of all proceedings already commenced, or judgments obtained against him. It is true, that the creditor may, if he has not proved his debt in bankruptcy, under some circumstances, independently of and not governed by the statute of Massachusetts, (Revised Laws, 1835, ch. 97, § 59) by a voluntary discharge of his debtor, who is in execution, from imprisonment, release his debt, unless the debtor assents to the discharge, with an agreement, that it shall not be a discharge of the debt. But the debtor will rarely or ever withhold such assent; and certainly the court would not aid him in withholding it. On the other hand, there is a question, which may arise upon this subject, important for the consideration of the creditor, (upon which, however, I give no opinion,) which is, whether, if the bankrupt should obtain his discharge, it will not relate back to the time of filing his petition, and affect all debts proved under the bankruptcy, so as to make the intermediate imprisonment of the execution debtor unlawful, and thereby found an action for false imprisonment against the creditor. This difficulty can readily be avoided

by the creditor, if he chooses, either by an agreement with the debtor, or by a voluntary proof of his debt in bankruptcy.

These are the most material considerations, which appear to me to be important to suggest upon the present occasion. Upon the whole, it is my opinion, that the petitioner is not entitled to any discharge from imprisonment, or to any other relief, in the present stage of the proceedings in bankruptcy; and I shall order it so to be certified to the district court.

Decree accordingly.

District Court of the United States, Massachusetts, March 26, 1842, at Boston. In Bankruptcy.

IN THE MATTER OF GRENVILLE T. WINTHROP.

A judgment creditor enjoined from committing a bankrupt to prison.

IN this case the bankrupt presented his petition, setting forth that the petitioner, upon the 8th day of March, was, upon his petition to this court, declared to be a bankrupt; that an assignee had been appointed, according to the late act of congress, in his behalf, and that it was necessary for him to be ready, at all times, for examination in regard to his affairs; that he had filed his petition for a discharge; that Ebenezer Trescott, of Boston, recovered a judgment against the petitioner, in the court of common pleas, at the last January term, and had sued out an execution thereon, and placed the same in the hands of a deputy sheriff of Middlesex, on March 22d, with written directions to collect the amount of the same, or commit the petitioner forthwith to prison, and in consequence of such directions, said deputy sheriff was about to commit the petitioner to jail. Wherefore he prayed, that said Trescott, and said deputy sheriff, and all other persons, might be enjoined from arresting or committing the petitioner to jail, until a hearing could be heard upon his petition for a discharge.

William C. Aylwin for the petitioner.

Ebenezer Trescott, pro se.

SPRAGUE J. sustained the application, and granted the injunction. He observed, that it appeared, by the affidavits of the petitioner and the assignee, that the presence of the petitioner was necessary, to give information to the assignee, and to assist him in relation to the estate; that the petitioner ought to be in a situation at all times to obey the orders of the court, and that his being in close confinement would conflict with the proper exercise of the jurisdiction of

the court under the bankrupt law. But, besides this, the object and purpose of the creditor here were inconsistent with the object and purpose of the bankrupt law. He sought to coerce his debtor to give him a preference. The law forbad that preference. The object of enforcing the execution was to compel the debtor to turn out property, or to disclose secret funds, wherewith to pay the debt. But the bankrupt law had divested him of all his property. He could have no funds; and if he should, from any property, open or secret, pay this execution, the creditor could derive no benefit therefrom, as he would be immediately compelled to pay over the same to the assignee, upon a proper application for that purpose. It is the purpose of the bankrupt law to distribute all the property of the bankrupt among his creditors, and, if he has conducted fairly, to discharge him from his debts. This process has been commenced in the present case. The petitioner has been divested of all his property, for the benefit of all his creditors. The time for hearing his application for a discharge has not yet arrived. Shall the creditor, in this interval, after the bankrupt has been by law absolutely disabled from paying this debt, be permitted to use an instrument to coerce payment, when there is no reason to doubt that the bankrupt has acted in good faith, and will be entitled to his discharge from this very debt?

The judge decreed an injunction until the further order of court, observing that it would be open to the creditor, at any time, to move to have it dissolved.

District Court of the United States, Southern District of New York, April, 1842. In Bankruptcy.

In the matter of Alexander Greaves.

Petitioners for the benefit of the bankrupt law are bound to discharge all expenses incident to the prosecution of their application.

In this case the bankrupt presented an affidavit setting forth that he was poor and destitute of all means of support, or to pay the expenses of obtaining the benefit of the act, and that the general assignee had required an advance of ten dollars, previous to acting upon the decree of bankruptcy in this case. The affidavit stated further that he had no property or effects, and that none passed to the assignee by the decree. His counsel moved that the bankrupt be allowed to complete his proceedings, without any action of the assignee under the decree. The general assignee referred to the inventory of property filed by the bankrupt on presenting his petition, by which he represented his property to consist of one fifth of ten thousand acres of

land in Kentucky, one half of one hundred acres in Essex county, N. Y., three lots of land in Pennsylvania, (unless sold for taxes), five shares in the Norfolk Granite Company, Quincy, N. Y., and also claims of debts amounting to seven or eight hundred dollars. The petition was sworn and filed March 1, 1842.

Edwards for the bankrupt.

Betts J. No provision is made by the bankrupt act enabling parties to conduct proceedings *forma pauperis*, and the act evidently contemplates that they shall discharge all expenses incident to the prosecution of their application. Indeed parties may well be regarded as bringing suits or actions to enforce in their own favor the provisions of the statute. This would properly characterize the proceedings in cases of involuntary bankruptcy, and there is no great incongruity or inaptness of expression in applying it to those of the voluntary bankrupt. He seeks to be declared exonerated from his debts by judgment of the court, and it would not be extraordinary or inequitable that he should provide for all expenses created in securing a decree so exclusively for his own benefit. These expenses, except in case of opposition, could rarely exceed the costs in an ordinary collection suit. There are other considerations which will prevent granting the motion now made. It seeks to impose upon the court duties appropriate to the assignee. Upon the principle of this application, the court may be called upon in each case to withhold the matter from an assignee, by declaring there is no estate to collect or distribute, and that, therefore, the assignee need take no steps respecting it. This would abrogate a provision of the law, of great importance to creditors. The assignee stands as trustee in their behalf, stimulated by his personal interest, to search out and collect for their benefit every species of property belonging to the bankrupt; and most assuredly the court will be very cautious in interfering with this main protection to their interests provided by the law. Besides, the substitution of the court for the assignee would be inconvenient in the extreme, if the law allowed it to be done. The mere *ex parte* statements of the bankrupt would generally be all the evidence it could command, and instead of being aided by the vigilance and personal examination of an assignee, applied to the subject, questions respecting a bankrupt's estate and rights would have to be disposed of upon such representations as he might choose to lay before the court. The present case illustrates both the inconvenience of that method of proceeding and also the mischiefs that might result from it. The bankrupt, on presenting his petition, filed also a sworn inventory of property, which would seem to promise to yield something to his creditors. Possibly the expectation of benefit from the assignment may have induced them to acquiesce in a decree. After the decree is perfected, the bankrupt presents his affidavit, that the estate scheduled was not his property, but had been previously assigned or conveyed by him, and

asks the court to take the decree out of the hands of the assignee and to give him the benefit of the act without having any investigation of his affairs or estate. The reason urged for so extraordinary an interposition is, that the assignee demands an advance sufficient to cover his expenses before he will act upon the decree; and this the bankrupt says, he is unable to furnish. If the demand of the assignee was shown to be unreasonable in amount, the court would take measures immediately to protect the party; but that some mode should be provided for indemnifying the officer in the execution of his duty, cannot be denied. The court might have required bonds of the bankrupts in all cases, to cover necessary charges; but it was thought more simple and more advantageous to them to leave them to arrange the manner of indemnification with the assignee. If any assets are realized, the expenses will ultimately fall on the estate, and if not, it is one of the charges the bankrupt must meet as necessarily incident to his proceeding. The court must be informed through the official report of the officer designated by the statute, that the bankrupt has delivered over his estate or furnished means by which it can be traced out, and called in before a decree of final discharge can properly pass. The assignee and his appropriate offices in this case, can no more be dispensed with, than any other branch or particular of the proceedings, directed by congress; and a bankrupt might with like propriety, because of his poverty or undeniable probity, solicit the court to decree him his discharge in the first instance, and dispense with every preliminary proceeding, as ask to be relieved from making an assignment and enabling the assignee to furnish the report to the court demanded by the rules.

Supreme Judicial Court, Massachusetts, March Term, 1842, at Boston.

COPELAND *v.* NEW ENGLAND MARINE INSURANCE COMPANY.

Where the master of a vessel became incompetent at an intermediate port, at which a new master might have been obtained, and the vessel was lost, after sailing from such port, by means of such incompetency, it was *held*, (WILDE J. dissenting) that the insurers were liable for the loss.

THIS was an action on a policy of insurance, dated August 8, 1836, upon the brig Adonis, Joseph Gillespie, master, for a voyage from Wilmington, N. C. to Jamaica, in the West Indies, and back to a port of discharge in the United States. The brig was wrecked upon a coral reef, at Point Esto, near the Isle of Pines, on her passage from Jamaica to the United States, on the night of September 21, 1836, and was wholly lost. The plaintiffs brought this action to re-

cover for that loss. At the trial before WILDE J., in 1839, the principal ground relied upon in the defence was, that the brig was unseaworthy when she left Jamaica, by reason that the captain, from sickness, insanity, or intoxication, had become suddenly incompetent to have command of her. Upon this point evidence was introduced which tended to prove, that, at the time the vessel sailed from Jamaica, and for some time previous, the master, by reason of severe sickness, or continued intoxication, or some other cause, had become insane, and wholly unfit to have the command of the vessel, and that he continued in this state until the time of the loss. On this evidence the jury were instructed, that if these facts had been proved to their satisfaction, the underwriters were discharged. That it was the duty of the assured to keep their ship in a competent state of repair and equipment during the voyage, if they were able to do so; and that, consequently, when the master became incompetent, it was the duty of the first mate to take the command of the vessel, and if resisted by the master, application should have been made to some competent authority, to restrain the master, and to prevent the vessel from going to sea under his command. That, as this was not done, and as the master's incompetency continued until the time of the loss, it might be reasonably inferred, under the facts proved, that the loss was the consequence of the master's mismanagement, for which the defendants were not responsible. Under these instructions, the jury found a verdict for the defendants, on the ground, that the master had suddenly become incompetent to command said brig, at the time she sailed from Jamaica, from one or all the causes above named, and on no other ground. The plaintiff moved for a new trial, and the case was argued at the March term, 1840, by

David A. Simmons for the plaintiff, and by
William D. Sohier for the defendants.

SHAW C. J. delivered the opinion of a majority of the court. He said that this case had been under advisement a long time, in consequence of a difference of opinion among the members of the court. They had discussed the points in the case several times, in the hope of being able to agree, and, having reluctantly come to the conclusion that this was impossible, he would now deliver the opinion of a majority of the court. The question he conceived to be substantially this: a vessel is well fitted out by the owners at the home port, and is entirely seaworthy; in the progress of the voyage the master becomes incompetent at a port where a new master might have been obtained; on the voyage home the vessel is lost, from a peril which was insured against, and which might be reasonably attributed to the incompetency of the master. Is this a loss within the terms of the policy of insurance, for which the underwriters are liable? The chief justice here went into an extended and elaborate examination of the law upon this point, citing all the decisions which had any bear-

ing upon it, and minutely examining every authority, both English and American. The result to which he came was, that the loss in the present case *was* within the terms of the policy, and that the instructions to the jury upon this point were wrong. He considered, that when a captain becomes incompetent, from any cause, the mate must take his place. It was undoubtedly the duty of the mate, in the present case, to have assumed the command of the vessel in Jamaica. But the fact that he did not do so was not such negligence as excused the underwriters. It was professional negligence, or want of judgment, which, however reprehensible, did not render the vessel unseaworthy, and was not of a character to be relied upon by the underwriters, in defence, there being nothing to show that the mate was not, in general, a skilful officer. The conclusion of a majority of the court was, that the instructions to the jury were wrong, and that the verdict must be set aside, and a new trial granted.

Wilde J. dissented from this opinion. He expressed his regret that he was unable to come to the same conclusion with his brethren. He was unable to see how the present opinion could stand with the case of *Paddock* v. *Franklin Insurance Company*, (11 Pickering's R. 227,) decided by this court in 1831. That case, all agree, is good law, and he was unable to see any difference in principle between that case and the present. The learned judge then went into an examination of the case referred to, and expressed himself clearly of opinion, that the present case was identical, in principle, with *Paddock* v. *Franklin Insurance Company*. The only difference between them, in his opinion, was, that in the latter case the ship foundered at sea, and in the present case the loss was in consequence of sailing from Jamaica with an incompetent master. At the trial, the jury were referred to the case of *Paddock* v. *Franklin Insurance Company*, and the law was laid down to them as it is there laid down. The vessel, in the present case, was not seaworthy when she left Jamaica, unless a vessel with an insane master is seaworthy. If she had sailed from her home port in such a condition, no one would pretend that the underwriters would be held for a loss. The question was, then, whether the vessel could not have been rendered seaworthy before she left Jamaica. When the master became incompetent, the mate was bound to assume and retain the command of the vessel, and appoint a new mate. If the master refused to yield up the command, it was the duty of the mate to call upon the local authorities to interfere. The consignee or agent at Jamaica might have appointed a new master, and the mate would have been bound to obey him. But if none was thus appointed, then the mate should have assumed the command. He concluded by expressing his opinion, that the instructions to the jury were clearly right, and that the defendants were entitled to judgment on the verdict.

Verdict set aside.

Gray *v.* Bennett.

The assignee of an insolvent debtor, in Massachusetts, is entitled to the same remedy for usurious interest, paid by the insolvent, as the latter is entitled to by the Revised Statutes, ch. 35, § 3.

This was a bill in equity, brought to recover threefold the amount of interest on money lent by the defendant to John C. Cook, on usurious interest. Cook having taken advantage of the insolvent law of Massachusetts, the plaintiff was appointed his assignee, and instituted this process to recover the sum of about thirteen hundred dollars, being threefold of what the defendant had received of Cook as usurious interest. The defence was, that, whatever right Cook might have to maintain such a suit as the present, the plaintiff could not maintain it, because the statute against taking usurious interest was in the nature of a penal statute, and could only be enforced by the person who borrowed the money.

C. P. and *B. R. Curtis* for the plaintiff.

Sidney Bartlett for the defendant.

Hubbard J. delivered the opinion of the court, to the effect, that, although laws against usury, in former days, were penal, yet the present laws on the subject, in this commonwealth, were of a remedial character. The right which Cook had to recover for taking this usurious interest, was in the nature of a vested interest, which passed to the plaintiff as assignee, with the other assets of Cook. The result was, that the plaintiff must recover, and the court ordered the bill and answer to be referred to a master in chancery, to report how much was to be paid.

Supreme Court of the United States, January Term, 1842, at Washington.

Dobbins *v.* Commissioners of Erie County.

In this case it was decided by the court that the State governments possessed no power to tax the pay, salary and official emoluments of the officers of the United States; and that it was an unconstitutional exercise of authority, and equivalent to a tax on the means and instruments of carrying into effect the constitution of the United States. The case arose in Pennsylvania, under the following circumstances. The State had by law authorized a tax upon the official pay, salaries and emoluments of all officers. Dobbins was the commander of a Revenue Cutter in the service of the United States, upon the Erie station; and he was taxed for his pay and emoluments, and profits of office as such officer, by the commissioners of Erie County, and he paid the same. A suit was thereupon brought by him to recover back the money in the State court; and the facts being agreed, the supreme court of the State decided that Dobbins was liable for the tax, and gave judgment against him accordingly. A writ of error was thereupon brought to the supreme court of the United States (by the direction of the national government, as it was understood); and the supreme court of the United States reversed the decision of the State court, and awarded judgment in favor of Dobbins, holding the taxing of an United States officer for his official pay and emoluments by a State, to be unconstitutional and void.

DIGEST OF AMERICAN CASES.

Selections from 23, 24, and 25 Wendell's (N. Y.) Reports.

ACCORD AND SATISFACTION.

An accord and tender of performance, is no bar to an action; to render an accord a bar, it must be executed. *The Brooklyn Bank* v. *De Grauw*, 23 Wend. 342.

ACTIONS.

An action lies at the suit of a counsellor, against his client; and the plaintiff is entitled to recover, under a *quantum meruit*, a reasonable compensation for his services, in arguing a cause. *Stevens* v. *Adams*, 23 Wend. 57.

2. An action will not lie here for any injury done by the diversion of a watercourse, where the premises injured are situate in another state: the injury so far savors of an injury to the realty as to be classed with local actions, and though the courts of New York will entertain actions which are in their nature transitory, notwithstanding they arise abroad, they will not do so as to actions which are in their nature local. *Watts' Adm'rs.* v. *Kinney*, 23 Wend. 484.

ACTION ON THE CASE.

An action lies by the owner of land against a railroad company, if, in the construction of their road upon or across a public highway they raise an embankment, by which the owner of the land is obstructed in passing to and from the road, and his property is otherwise rendered less valuable, notwithstanding the charter of the company authorizes the entry upon and use of such public highway; the license relates only to the road, and leaves the company liable to consequential damages sustained by individuals. *Fletcher* v. *The Auburn and Syracuse Railroad Company*, 25 Wend. 462.

ASSUMPSIT.

Assumpsit lies to recover back money collected under a judgment subsequently reversed on error; and the action lies against the real parties plaintiffs, where the suit was prosecuted in the name of a nominal plaintiff: therefore by assignees of a chose in action in the name of the assignor. *Maghe* v. *Kellogg*, 24 Wend. 32.

2. Where a female is debauched in the house of a stranger, and he by writing under seal authorizes a party standing *in loco parentis* to sue in his name for the recovery of damages, and a suit is accordingly commenced and judgment recovered, after which the nominal plaintiff acknowledges of record satisfaction of the judgment, an action may be maintained by the party thus authorized to sue, against the nominal plaintiff, for the recovery of the amount of the judgment, and the suit may be brought in assumpsit, notwithstanding that the writing giving authority to sue is under seal. *Stanton* v. *Thomas*, 24 Wend. 70.

3. A tenant in common may maintain assumpsit against his co-tenant, to recover his share of a gross sum received by the latter, for the use or hire of property held in tenancy in common; it is not necessary in such case that he should resort to the action of account, or to a bill in equity. *Cochran* v. *Carrington and Prall*, 25 Wend. 409.

4. Where the guardian of a lunatic purchased merchandise (which was charged to him) for the use of the lunatic and his family, an action cannot

be maintained against the lunatic, upon an implied promise to pay the amount, though he has recovered his reason, and his property been restored to him, without the guardian's retaining any part of it, to indemnify himself for his liabilities on account of his ward. At the time the purchases were made, the lunatic was not in a condition to make himself liable upon an implied promise, and subsequent events cannot create it. *Ib.*

ATTORNEY.

An action may be maintained in the name of one of two partners of a law firm, where the particular business respecting which the suit is brought is uniformly done in the name of the partner suing. *Platt* v. *Halen*, 23 Wend. 456.

BAILMENT.

Where common carriers have been guilty of negligence, whereby the owner of goods has sustained injury, the subsequent acceptance of the goods by the owner is no bar to an action; but may be given in evidence in mitigation of damages. *Bowman* v. *Teall*, 23 Wend. 306.

2. The freezing of our canals or rivers is such an intervention of the *vis major* as excuses the delay of the common carrier by water; but he is bound to exercise ordinary forecast in anticipating the obstruction; must use the proper means to overcome it; and exercise due diligence to accomplish the transportation he has undertaken as soon as the obstruction ceases, and in the mean time must not be guilty of negligence in the care of the property. *Ib.*

3. The owners of steam boats are liable, as common carriers, for the baggage of passengers: but to subject them to damages for the loss thereof, it must strictly be baggage, that is, such articles of necessity and personal convenience as are usually carried by travellers: It was accordingly held, in this case, in which a trunk, containing valuable merchandise and nothing else, was taken on board a steamboat and deposited with the ordinary baggage, and lost, that the carrier was not liable. *Pardee* v. *Drew*, 25 Wend. 459.

BILLS AND NOTES.

A note for payment of money, made, negotiated and payable here, in Canada money, is not a negotiable note within the meaning of the statute relative to bills of exchange and promissory notes, and consequently an action upon it in the name of an indorsee cannot be sustained. *Thompson* v. *Sloan*, 23 Wend. 71.

2. Notice of non-payment of a note erroneous in amount, and directed on its face to a person other than the one sought to be charged as indorser, is not sufficient, although it be directed on its outside to the indorser of the note described in the declaration. *Remer* v. *Downer*, 23 Wend. 620.

3. A certificate of a notary, that he sent notice of protest to an indorser, directed to a certain place, the reputed place of residence of such indorser, is sufficient presumptive evidence that such place is the reputed place of residence of the party. *Bell* v. *Lent*, 24 Wend. 230.

4. Whether his certificate that he had not been able to find the indorsers, after making diligent search and inquiry for them, is sufficient evidence of such inquiry, when the notice of protest is sent to a wrong place, *quere*. *Ib.*

5. On a guaranty indorsed upon a note, whereby the payment and collection of the note is guaranteed to a third person or bearer, an action lies by any subsequent holder in his own name. *Ketchell* v. *Burns*, 24 Wend. 56.

6. It is no defence to an action on a promissory note, that the property of the note is in a third person, and not in the plaintiff. Unless the possession of the note by the plaintiff is *mala fide*, and may work some prejudice to the defendant, the latter is not entitled to be heard on the subject. *Guernsey* v. *Burns & Graves*, 25 Wend. 411.

CONSIDERATION.

The transferring to another a bargain for the purchase of land is not a good consideration of a note for the payment of money, where there is no valid agreement on the part of the owner of the land to convey, and where the negotiation with him for the sale of the farm was made without any request from the maker of the note. *Ehle* v. *Judson*, 24 Wend. 97.

2. A mere moral or conscientious obligation, unconnected with a prior legal or equitable claim, is not a suffi-

cient consideration to support a promise. *Ib.*

CONSTITUTIONAL LAW.

The provision in the constitution of New York, requiring the assent of two-thirds of the members elected to each branch of the legislature to every bill creating, continuing, altering or renewing any body corporate or politic, does not apply to public corporations, such as cities or villages; it applies solely to private corporations, such as banking institutions or the like. Laws affecting public corporations may be enacted by a mere majority vote. *The People, ex relatione Lynch* v. *The Mayor of New York*, 25 Wend. 680.

CORPORATIONS.

A foreign corporation, keeping an office in New York for receiving deposits and discounting notes, without being expressly authorized by the laws of New York, cannot maintain an action for the money loaned either on a note or other security taken on such loan, or on the count for money lent. *New-Hope Delaware Bridge Comp.* v. *Poughkeepsie Silk Comp.*, 25 Wend. 648.

CRIMINAL LAW.

An indictment lies for obtaining goods by false pretences, where a party represents himself to be the owner of property which does not belong to him, and thus fraudulently induces the owner to sell the goods to him on credit. *The People* v. *Kendall*, 25 Wend. 399.

2. Although a minor, within the age of 21 years, cannot be made responsible *civiliter* for goods thus obtained, he may be proceeded against *criminaliter*, under the statute in respect to obtaining goods by false pretences. *Ib.*

3. To constitute the offence of forgery, in counterfeiting the notes of a bank, it is not necessary that such bank, as the notes purport to have been issued by, should have a legal existence: it is enough that the notes purport to have been issued by a corporation or company duly authorized to issue notes. *The People* v. *Peabody*, 25 Wend. 472.

DAMAGES.

In an action on the case against a railroad company for an injury sustained to the person of a passenger, through the negligence of the agents of the company, evidence of loss sustained by the plaintiff in his business, in consequence of the injury received, is proper to aid the jury in estimating the damages: and for that purpose the nature of the plaintiff's business, its extent, and the importance of his personal oversight and superintendence in conducting it, may be shown; but the opinions of the witnesses as to the amount of the loss are inadmissible. *Lincoln* v. *The Saratoga and S. R. R. Co.*, 23 Wend. 425.

2. The rule of damages for the non-delivery of chattels sold is the market price on the day appointed for delivery less the contract price where the latter is not paid; it is of no consequence at what price the purchaser had agreed to sell to others. *Davis* v. *Shields*, 24 Wend. 322.

3. In an action of trespass by a father for assaulting and beating his son *per quod servitium amisit*, a jury, in assessing the damages, are not authorized to take into the account the wounded feelings of the parents. *Cowden* v. *Wright*, 24 Wend. 429.

DEED.

A deed does not take effect as an operative instrument, although left in the hands of the grantee after its execution by the grantor, if it be so left solely for the purpose of transmission to a third person, in whose hands the parties had agreed it should remain until the happening of a certain event, when it should be delivered over and take effect. *Gilbert* v. *North Amer. Fire Ins. Comp.*, 23 Wend. 43.

2. A covenant for the sale of land, as well as a deed passing an interest in land, where the contract is made by an attorney in fact, to be valid, must be executed in the name of the principal by A. B. his attorney; if the attorney affix only his own name, the covenant is void, although in the body of the instrument it be stated that it is the agreement of the principal, by A. B., his attorney, that the principal covenants, &c., and in the *in testimonium* clause it be alleged that A. B., as the attorney of the principal, hath set his hand and seal. *Townsend* v. *Corning*, 23 Wend. 435.

3. The principals not being bound, the other party is discharged; and no act subsequently done by the covenant-

ors can give validity to the covenant without the assent of the covenantee. *Ib.*

4. It is conceded, however, that when the agent as such does an act *in pais*, though in his own name, or enters into a commercial or other contract not under seal, without subscribing the name of the principal, the latter is bound by the act of his agent. *Ib.*

5. A certificate, made evidence by statute, of certain facts, requires no proof of its genuineness, where on its face it appears to be regular. Thus, the certificate of the acknowledgment of a deed is received without proof of the official character of the officer granting it, or of his signature, or that it was granted within the jurisdiction where he is authorized to act. The evidence, however, is only *prima facie*, and may be rebutted. *Thurman* v. *Cameron*, 24 Wend. 87.

6. It is not necessary that a certificate of acknowledgment should be indorsed on a deed; it is enough if it be on any part of it. *Ib.*

7. Nor is it necessary that the officer should certify that he knew the person making the acknowledgment to be the grantor described in the deed, if he state that he knew him to be the person who executed it. *Ib.*

EVIDENCE.

Proof of declarations made by a witness out of court, in corroboration of testimony given by him on the trial of a cause, is, as a general and almost universal rule, inadmissible. *Robb* v. *Hackley*, 23 Wend. 50.

2. Where a will produced on the trial of a cause was more than fifty years old, it was held, that the legal presumption attached that the witnesses were dead, and that the party might resort to secondary evidence to prove the will; and that its production with the probate attached was sufficient evidence to authorize its being read. *Northrop* v. *Wright*, 24 Wend. 221.

3. Where a party on the trial of a cause avails himself of an admission of his adversary to sustain his action or defence, the opposite party is entitled to prove such other parts of the conversation had on his part as tend to explain, modify, or even destroy the admission made by him; but is not at liberty to call for such parts of the conversation had by him as relate to assertions made operating in his favor upon the general merits of the case, but having no connection with the admission made. *Garey* v. *Nicholson*, 24 Wend. 350.

4. After an equal number of witnesses have been sworn on each side, in the impeaching or supporting of the character of a party or witness, it is in the discretion of the presiding judge whether a greater or farther number of witnesses shall be examined. *Bissell* v. *Cornell*, 24 Wend. 354.

5. Proof of the hand-writing of deceased subscribing witnesses to a deed is not sufficient evidence of its execution to entitle it to be read to the jury, where the deed on its face excites suspicion of fraud. The party producing it must, in such case, in addition to proving the hand-writing of the subscribing witnesses, give evidence explaining the suspicious circumstances, or proving the identity of the grantor. *Brown* v. *Kimball and Rowe*, 25 Wend. 259.

6. Proof of the seal of a medical institution, and of the signatures of the officers thereof, to a diploma produced on the trial of a cause, by comparison with the seal and signatures attached to a diploma received by the witness from the same institution, is competent evidence of the genuineness of the instrument, although the witness never saw the officers write their names. *Finch* v. *Gridley's executors*, 25 Wend. 469.

7. A party is not entitled to the benefit of the testimony of a witness, who dies after he has been examined and testified, and before the opposite party has had an opportunity to avail himself of a cross-examination. *Kissam* v. *Forrest*, 25 Wend. 651.

FEME COVERT.

A feme covert, who retains counsel in a suit prosecuted by her for a divorce, is not liable to him in an action for his fees, unless subsequent to the divorce she promise to pay. *Wilson* v. *Burr*, 25 Wend. 386.

FRAUDS, STATUTE OF.

An agreement by a partner to collect the debts due to a firm, and to pay over the one half to the assignees of his copartner, in consideration of their relin-

quishing to him the whole control of the debts, and assuming the payment of certain debts owing by the firm, is not within the statute of frauds. *Mersereau* v. *Lewis*, 25 Wend. 243.

HABEAS CORPUS.

As a general rule, a father is entitled to the custody of his minor children; but when the parents live apart under a *voluntary* separation, and the father has left an infant child in the custody of its mother, such custody will not be transferred to the father by the process of *habeas corpus*, when the infant is of tender age, and of a delicate and sickly habit, peculiarly requiring a mother's care and attention; and especially will not an order for such transfer be made where the qualifications of the father for the proper discharge of the parental office are not equal to those of the mother. *Mercein* v. *The People ex relatione Barry*, 25 Wend. 64.

INFANCY.

An infant imprisoned in execution in a civil suit is entitled to a discharge from imprisonment, on assigning his property in compliance with the provisions of the statute; and such assignment is valid, notwithstanding his nonage. *The People ex rel Smith* v. *Mullin*, 25 Wend. 698.

INSURANCE.

An insurance company are bound by a policy issued by an agent appointed to effect insurances for a particular city and its vicinity, although he insures property at a distance of one hundred miles in another city, for which and its vicinity the company had another agent, if the agent issuing the policy claims to have authority to effect the insurance, and the fact of the existence of the other agency is not brought home to the knowledge of the assured. *Lightbody* v. *The North American Insurance Company*, 23 Wend. 18.

2. A policy of insurance upon the body, tackle, &c. of a vessel, at and from New Orleans, Campeachy, and Havana, for the period of six calendar months from a certain day, is a policy on time, and does not limit the navigation of the vessel to voyages between the places specified in the policy; provided the vessel take her departure from either of them, let her port of destination be where it may, she is under the protection of the policy for the whole period of the specified time. *Groussett* v. *The Sea Insurance Co.*, 24 Wend. 209.

3. Where a vessel insured for twelve calendar months, and if at sea at the expiration of the term, the risk to continue at the same rate of premium until her arrival at the port of destination, commenced (when one hundred and twenty days of the policy were unexpired) a voyage ordinarily occupying seventy days, and in the course of her passages from place to place sprung aleak, so that repairs became necessary, and whilst they were making, the specified term expired, it was held, that the insurers were not liable for the loss of the vessel, which happened on her return passage to the port from which she departed when the voyage commenced, she not being at sea, within the meaning of the policy, at the expiration of the specified term. *The American Ins. Co.* v. *Hutton*, 24 Wend. 330.

LANDLORD AND TENANT.

A condition in a lease not to sell or dispose of any wood or timber off and from the demised premises, without permission in writing from the landlord, is a good and valid condition, and a breach thereof works a forfeiture of the estate, although the tenant consents to reserve thirty acres as a wood lot on a farm of one hundred and eighty acres. *Verplanck* v. *Wright*, 23 Wend. 506.

2. Where a lessor puts an end to a term intermediate the days specified in the lease for the payment of rent, he is not entitled to claim an apportionment of rent and recover the portion accrued since the last rent-day, unless there be a provision in the lease allowing a demand *pro rata*. *Zule* v. *Zule*, 24 Wend. 76.

3. A provision in a lease, that the rent shall cease if the premises become untenantable by fire or other casualty, does not extend to the case of a building, in the city of New York, becoming untenantable in consequence of the greater portion of it being taken down, to conform to an order of the corporation for the widening of the street on which it is situate. *Mills* v. *Bachr's executors*, 24 Wend. 254.

MORTGAGE OF PERSONAL PROPERTY.

A mortgage of goods and chattels, though unaccompanied by an immediate delivery and not followed by an actual and continued change of possession of the thing mortgaged, is not void, if it be made to appear on the part of the mortgagee that the same was made in good faith and without any intent to defraud purchasers or creditors. *Smith* v. *Acker*, 23 Wend. 653.

2. Continuance of possession in the mortgagor affords the highest presumption of fraudulent intent amounting to conclusive proof, unless it be rebutted by such evidence as to make the good faith of the transaction appear affirmatively. Guilt and not innocence is presumed, and the burden of proof is thrown wholly upon the party claiming under the mortgage. *Ib.* [See 3 Law Reporter, 389.]

PARTNERSHIP.

The interest of a member of a copartnership in the partnership goods may be levied upon and sold, and after the levy and previous to the sale the sheriff is authorized to take a joint possession with the other members of the firm; whether the sheriff in such case can take the exclusive possession, *quere*. *Burrall* v. *Acker*, 23 Wend. 606.

2. Where, upon such a levy, the other members of the firm covenant with the sheriff to deliver to him the property on request, or pay the debt, it is no answer to an action for breach of such covenant, that the property was partnership property, and had, subsesequent to the covenant, been applied to the use of the copartnership. *Ib.*

3. On an execution against one of two partners, the sheriff may seize the entire partnership effects, or so much thereof as may be necessary to satisfy the execution, and sell the interest of the partner against whom the execution is issued; and an action of trespass will not lie against the sheriff at the suit of the other partner or his assignees for delivering to the purchaser the property sold. *Phillips* v. *Cook*, 24 Wend. 389.

4. The purchaser, in such case, becomes a tenant in common with the other partner, and if he purchase with notice that the goods are partnership effects, takes subject to an account between the partners, and to the equitable claims of the creditors of the firm in the name of the other partner. *Ib.*

5. An express promise by one partner, out of his share of the income, to pay to another partner an equivalent in money, for the personal attention of the latter to the business of the concern, may be enforced by an action of assumpsit, notwithstanding the existence of the partnership, and that the articles of copartnership are under seal and provide for such payment; it is not necessary to bring covenant on the articles. *Paine* v. *Thacher*, 25 Wend. 450.

PRINCIPAL AND AGENT.

An action will not lie against a factor or agent to whom goods are sent to be sold at auction, without a demand of the proceeds or instructions to remit, before suit brought. *Cooley & Bangs* v. *Betts*, 24 Wend. 203.

2. It seems that there is a distinction between an action for not accounting, and an action for not paying over the proceeds of goods sold, and that in the former case it is enough to show a neglect to account within a reasonable time, to maintain the action. *Ib.*

PRINCIPAL AND SURETY.

A guaranty addressed to a mercantile firm in these words: "We consider Mr. J. V. E. good for all he may want of you, and we will indemnify the same," is a valid instrument binding upon the guarantors, who are not entitled to notice of the acceptance of the guaranty or of the sale and delivery of goods under it to the principal. *Whitney* v. *Groot*, 24 Wend. 82.

2. Such a guaranty, however, is not a continuing guaranty; the party making it is liable for the amount of only such goods as were obtained on its first presentation, and not for those subsequently obtained, and the first payments made by the principal must be applied towards satisfaction of the charge for which the surety is responsible. *Ib.*

3. It seems that when premises are demised for one year, with the privilege to the tenant to continue in possession four years longer at the same rent, and the tenant avails himself of the privilege, that the guaranty of a third person

for the payment of the rent would be held to be a continuing guaranty during the possession of the premises by the tenant. *Dufau* v. *Wright*, 25 Wend. 636.

REFERENCE.

The provision in the constitution of the United States, securing a trial by a jury, relates only to trials in courts organized under the constitution and laws of the United States, and is no objection to a cause being heard by referees in the courts of New York; nor is the similar provision in the constitution of that state an objection. Previous to the adoption of the state constitution, references were well known and sanctioned by statute. *Lee* v. *Tillotson*, 24 Wend. 337.

SALE OF CHATTELS.

A contract for the sale of seven hundred bushels of wheat, two hundred and fifty of the quantity being then in a granary, and the residue unthreshed, but which the vendor agreed to get ready and deliver, together with the wheat in the granary after giving it a second cleaning, in six days, at a specified place, payment to be made on delivery, was held to be within the statute of frauds; there being no note in writing of the contract, no delivery of part of the property, and no payment of any part of the purchase money. *Downs* v. *Ross*, 23 Wend. 270.

2. Where goods belonging to his principal, were sold by a factor without knowledge of the ownership on the part of the purchaser, the latter, in an action on the contract by the principal, for the price of the goods, was held entitled to set off a demand against the factor, although the sale was a cash sale, and the purchaser, when he obtained the goods, did not intend to abide by his contract, but purposed to set off his demand against the factor. *Hogan* v. *Shorb*, 24 Wend. 458.

3. It was further held, that the purchaser in this case was entitled to his set-off, although it consisted of a note of the factor not due until forty-five days after the sale, the principal not having commenced his suit until after the maturity of the note. *Ib.*

SLANDER.

A representation to a bishop or church judicatory having power to hear, examine, and redress grievances, in respect to the character or conduct of a minister of the gospel, or a member of a church, is *prima facie* a privileged communication, and if made in good faith, an action of slander does not lie against the party presenting it; but if the representation be false, or impertinent, made without probable cause or belief in its truth, the action lies. The *onus* of proving its falsehood and malice is, however, on the plaintiff. *O'Donaghue* v. *M'Govern*, 23 Wend. 26.

2. An action for a libel may be sustained by an individual for an injury to his business, resulting from a libellous publication, although it affects the business of others engaged in the same calling as well as his own, unless it be manifest upon the face of the publication, that the charges made were intended against a class of society, a particular profession, an order or body of men, and cannot by possibility import a personal application tending to private injury. *Ryckman* v. *Delavan*, 25 Wend. 186.

3. When the words may, by any reasonable application, import a charge against several individuals under some general description or general name, the plaintiff has the right to proceed to trial, and it is the province of the jury to decide whether the charge has the personal application averred by the plaintiff. *Ib.*

TRESPASS.

The inhabitant of a dwelling-house may lawfully kill the dog of another, where such dog is in the habit of haunting his house and by barking and howling, by day and by night, disturbs the peace and quiet of his family, if the dog cannot be otherwise prevented from annoying him; a wanton destruction of the animal is not justifiable. *Brill* v. *Flagler*, 23 Wend. 354.

2. It seems that the owner of a dog is responsible for his chasing and worrying sheep, after he is informed of the propensity of the whelp. *Ib.*

INTELLIGENCE AND MISCELLANY.

THE LAW REPORTER. In commencing, with the present number, the fifth volume of the Law Reporter, it gives us great pleasure to remark, that the success of the work continues to be highly satisfactory to all connected with it; and it is an equally gratifying circumstance in its history, that nearly all of the earliest subscribers still give it their support and encouragement, whilst the subscription list of the publication has been constantly although slowly increasing from its commencement down to the present time. The Law Reporter was established in 1838, and its main object was announced to be, to afford a medium of communication for such legal *matters of fact* as might be useful and interesting to gentlemen of the bar, and to give the profession, *immediately*, so far as it could be done by a periodical work of frequent publication, accurate and condensed reports of the most important cases decided by the superior courts of civil and criminal jurisdiction, together with such points of practice and judicial interpretation as might be deemed worthy of publication. The general plan of the work has remained unchanged, although there has been a constant effort to adopt such improvements and modifications as were suggested by experience, or the advice of those whose opinions are entitled to the highest consideration. We have not hesitated to reject all suggestions of changes, which would, in effect, work an entire alteration in the character of the work, however flattering the inducements might be; and it has been our constant desire to pursue with industry and energy, the course originally marked out for us, preferring the charge of dull mediocrity, to that praise which is the result of exciting discussions, and is of little substantial value. We have been so well satisfied with our success, however small it may have been, that we have always endeavored to pursue the path of sober usefulness, rather than to make any attempt at brilliant eccentricities. But we should do great injustice to our own feelings if we did not remark, in this connection, that we are principally indebted for our prosperity, to those who have constantly aided us by their contributions; and we venture to assert, with equal pride and pleasure, that many of the contributions which have appeared in the Law Reporter, would be an honor to any magazine in the country. Among those who have thus afforded us their assistance, may be mentioned the names of Mr. Justice STORY of the supreme court of the United States,— Judges DAVIS, HOPKINSON, and SPRAGUE, of the district courts of the United States,— Chief Justice GIBSON, of Pennsylvania,— Judge THACHER, of the Boston municipal court,— Mr Justice EMERY, of Maine, —Professor GREENLEAF, of the Cambridge Law School, — THERON METCALF, reporter of Massachusetts,— Hon. JAMES T. AUSTIN, attorney general of Massachusetts, SAMUEL D. PARKER, Esquire, attorney of the Commonwealth of Massachusetts for Suffolk,— Hon. JOHN PICKERING, CHARLES G. LORING, HENRY H. FULLER, CHARLES P. CURTIS, IVERS J. AUSTIN, Esquires, of Boston; and many others in distant parts of the country. We have reason to expect that most of our former contributors will still continue their favors from time to time. In addition to this, we will state, in conclusion, that no exertion will be spared to furnish the profession with prompt and accurate notices of new decisions, and such other information as may be considered useful and interesting.

THE BANKRUPT LAW. Much of our present number is occupied by decisions in bankruptcy, and we do not know that we can, under existing circumstances, perform a labor more acceptable to our readers, than to spread before them early information upon a subject which is of such general interest and importance.

The question in relation to the effect of attachments on mesne process before the proceedings in bankruptcy are commenced, has been most elaborately argued in Boston, before Mr. Justice Story, and his decision will undoubtedly be pronounced before the publication of our next number. We shall hasten to lay a report of this decision before our readers at the earliest moment after it is given. We can conceive of no more important question, so far at least as many of the States are concerned, that can arise under the law; and there is every reason to expect, that the learned judge, who has the subject under consideration, will give it a most earnest and patient investigation.

There have been several decisions of interest in bankruptcy, for which we have no room this month. In one instance, Judge Sprague, upon the petition of creditors, has enjoined the debtor from interfering with his property. In another case, the assignee claimed certain property, described in the schedule of the bankrupt as the stock in two victualling establishments. In the same schedule, the bankrupt represented his household furniture as worth two hundred dollars, but subject to a mortgage for a larger amount. The bankrupt contended, that since he had no household furniture, except such as was subject to a mortgage for more than its value, it was the duty of the assignee to set apart a portion of this property for the use of the bankrupt, not exceeding two hundred dollars. But the court ruled that the claim of the assignee was good.

We continue the publication of lists of bankrupts. In this number will be found the names of the petitioners in the southern district of New York. The publication of these lists is very expensive; they also occupy considerable space; we shall continue them for the present, but to what extent, will depend somewhat upon the favor with which they are received. It was our intention originally to publish the names of those only *who had been declared bankrupts*, but perhaps the *filing of the petition* is the more appropriate starting-point.

We cannot but remark, that, as the bankrupt law goes into operation, the practical difficulties which were apprehended in carrying out its provisions, are found to be of less consequence than was apprehended. An esteemed correspondent, in remarking upon this subject, concludes his communication thus: That a new law, embracing so vast a field, and touching all classes and interests in the community, should be full of doubts and difficulties, apparent or real, is not remarkable. But as the principle of a bankrupt law is one, which ought to be incorporated into the legislation and jurisprudence of every commercial and trading people, it is surely desirable to greet this attempt to engraft it upon ours, with a friendly spirit. Many objections have been started to the present act, some of which do not seem of so serious an import, as has been supposed. It was gravely urged, in the late attempt to repeal the law, that it could not be carried into effect, to any considerable extent, by the present number of judges. To support this argument, very extravagant statements were made, of the amount of business, which would arise under it. If this were true, it might be a good reason for increasing the number of judges, but it would seem to add strength to the motive to provide a relief for a burden, which has already increased to such an alarming extent. But there is very little truth in such statements. Almost every matter, coming under the operation of the law, will pass before the court, as a matter of course, without opposition or contestation; and the laborious part of the business will be administered through the agency of assignees and commissioners. It has been objected, that every question of any considerable importance, arising under the law, can be carried, at the option of the parties, before a jury, and in most cases, by appeal to the circuit court. But would any body be satisfied with a law, which did not reserve these rights to the party aggrieved? Does not the Massachusetts

insolvent law reserve the same rights, in a manner full as ample? Very few such questions, every body knows, and all experience shows, will ever in fact be so tried. The expense of such litigation, prevents the frequent trial of such matters. All parties submit to wrong, to avoid the expense and hazards of an appeal to arms, unless the case be one of magnitude and importance. Whatever may be the opinion of the world, generally, who know nothing of such matters, the truth is, that the injured party too frequently submits, from mere poverty and inability to try their rights. Again, it has been suggested, that the petitioning bankrupt will have a motive to delay the decree of bankruptcy, because in the mean time, he had the control of his property, — and it is intimated that "months will be, and *years may be* consumed," "before the property is taken from the debtor." But I would fain be told, in what way a petitioner can delay the granting of the prayer of his own petition. The bankrupt, in the mean time, is under the very embarrassments, which he prays to have removed. The case of involuntary bankruptcy may be liable to some difficulty of this sort; but voluntary bankruptcy can never be thus impeded by the bankrupt himself. Indeed, in all cases, except one, the decree of bankruptcy is a mere matter of course, and will be passed without inquiry; — the only exception is in cases, where the bankrupt owes only debts arising from defalcation as a public officer, or in some fiduciary relation.

The contested Seat of Mr. Levy as Delegate from Florida. Just as the last sheets of our present number were going to press, we received this important and interesting pamphlet on a great constitutional question, entitled, "Case and opinion of P. S. Duponceau and A. Davezac on the contested seat of Hon. David Levy, delegate from the territory of Florida to the congress of the United States." Though signed by the two counsellors above-named, we venture to ascribe the learned research to our veteran jurist, Mr. Duponceau, now in his eighty-first year; the extensive learning, particularly in the civil law part of the argument, and the large and statesman-like views, could have come from no other of our jurists; and it is gratifying to see the same mind, which has so long contributed to enlighten and instruct us, still in full vigor, and able to grasp the greatest questions. The argument rests upon the terms of the treaty by which Florida and its citizens were annexed to the United States, and the ordinances made in pursuance of it; and the naturalization of M. E. Levy, formerly of the Empire of Morocco, and father of the candidate, and under whom the latter claims his citizenship. The question submitted to the counsel is thus stated: "Was David Levy, Esq., at the time of his election as a delegate to congress, a citizen of the United States?" The opinion of the counsel is, that Mr. Levy "was, and is at present a citizen;" and the opinion is sustained with great ability. We understand that two successive committes of congress have reported *opposite* opinions upon the case! We hope this has not been the result of political feeling in either instance.

Chief Justice Marshall. A Committee of the Philadelphia Bar have addressed a circular to the "Bar of the United States," inviting donations for the erection of a monument to the memory of the late Chief Justice Marshall. They state that about $2,000 were contributed towards the object in 1835, — no individual subscription exceeding ten dollars. Of the amount subscribed, says the circular, "the Bar of Pennsylvania contributed one half, and that of Virginia (Norfolk and Richmond) one fourth. From the large commercial cities of the union, Boston, New York, Baltimore, Charleston, Savannah or New Orleans, no contributions have been received."

Lord Redesdale. Sir John Mitford (Lord Redesdale) was appointed chancellor of Ireland in 1802. As a chancery lawyer he had no superior, and, so far as legal excellence was concerned, the choice of ministers could not have been better directed. But there were obstacles to his success, resulting in a great measure from the then excited condition of Ireland, which can scarcely be appreciated at the present day. The hostility of the chancellor to the Roman Catholics naturally rendered him unpopular with the people of Ireland, and it has been remarked, that his manners were too cold and unbending for that over sociable and excitable nation. His want of sympathy with the fun and frolic of the Irish bar, whose punning, rollicking leaders attended more to plays and jest books than to causes or precedents, was a lesser evil, which the good feeling on both sides soon attempted to remedy, but which must have occasioned at first some unwelcome surprise, and disagreeable sensations. Sir Jonah Barrington has given a lively sketch of one of these rencontres, which, though colored and exaggerated, bears intrinsic evidence of truth.

"Lord Redesdale was much, though unintentionally, annoyed by Mr. Toler (Lord Norbury) at one of the first public dinners he gave as Lord Chancellor of Ireland to the judges, and king's counsel. Having heard that the members of the Irish bar (of whom he was then quite ignorant) were considered extremely witty, and being desirous, if possible, to adapt himself to their habits, his lordship had obviously got together some of his best bar remarks (for of wit he was totally guiltless, if not inapprehensive) to repeat to his company, as occasion might offer, and, if he could not be humerous, determined at least to be entertaining. The first of his lordship's observations after dinner was, the telling us, that he had been a Welsh judge, and had found great difficulty in pronouncing the double consonants, which occur in the Welsh proper names. After much trial, continued his lordship, I found that the difficulty was mastered, by moving the tongue alternately from one dog-tooth to the other. Toler seemed quite delighted with this discovery, and requested to know his lordship's dentist, as he had lost one of his dog-teeth, and would immediately get another in place of it. This went off flatly enough, no laugh being gained on either side. Lord Redesdale's next remark was, that, when he was a lad, cock-fighting was the fashion, and that both ladies and gentlemen went full dressed to the cockpits, the ladies being in hoops. 'I see now, my lord,' said Toler, 'it was then that the term cock-a-hoop was invented.' A general laugh now burst forth, which rather discomposed the learned chancellor. He sat for a while silent, until skating became a subject of conversation, when his lordship rallied, and, with an air of triumph, said that, in his boyhood, all danger was avoided, for, before they began to skate, they always put blown bladders under their arms, and so, if the ice happened to break, they were buoyant, and saved. 'Ay, my lord, that's what we call *blatheram skate* in Ireland.' His lordship did not understand the sort of thing at all, and, though extremely courteous, seemed to wish us all at our respective homes. Having failed with Toler, in order to say a civil thing or two, he addressed himself to Mr. Garrat O'Farral, a jolly Irish counsellor, who always carried a parcel of coarse national humor about with him, a broad, squat, ruddy-faced fellow, with a great aquiline nose, and a humorous eye. Independent in mind and property, he generally said whatever came uppermost. 'Mr. Garrat O'Farral,' said the chancellor solemnly, 'I believe your name and family were very respectable and numerous in County Wicklow: I think I was introduced to several of them during my last tour there.' 'Yes, my lord,' said O'Farral, 'we were very numerous, but so many of us have been lately hanged for sheep-stealing, that the name is getting rather scarce in that county.' His lordship

said no more, and (so far as respect for a new chancellor permitted) we got into our own line of conversation without his assistance. His lordship began by degrees to understand some jokes a few minutes after they were uttered. An occasional smile discovered his enlightenment, and, at the breaking up, I really think that his impression was that we were a pleasant, though not a very comprehensible race, possessing at a dinner table much more good fellowship than special pleading, and that he would have a good many of his old notions to get rid of, before he could completely conform to so dissimilar a body, but he was extremely polite. Chief Justice Downes, and a few more of our high, cold, sticklers for decorum, were quite uneasy at this skirmishing."

American Jurist. The American Jurist for April, 1842, presents its usually high claims to the consideration of the legal profession. There is an entertaining biographical sketch of Lord Thurlow, in which the non-professional reader will find much that is curious and amusing. There is also a curious and characteristic letter from Jeremy Bentham, to a gentleman in New Hampshire, which has never before been published. The right of visitation and search in time of peace is discussed, in an elaborate, impartial, and judicious paper. We trust, however, that we are doing no injustice to the remainder of the number, if we express the peculiar pleasure with which we have read the article on the case of the Creole. It is a learned, candid, and high-toned paper, clearly reasoned, and written in a neat, forcible, and manly style, and to our view, quite conclusive. Those who disagree with the writer in the conclusions to which he arrives, cannot but approve of its dignified spirit, and its elevated tone of feeling. Discussions conducted in this temper, and with such sound legal ability, are always profitable and instructive, and contribute to the improvement of the law.

Starkie on Evidence. A new and revised edition of Mr. Starkie's treatise on evidence, after having been in press between two and three years, has at length been published in London, and an American edition is said to be in press in Philadelphia. The last number of the (English) Law Magazine contained a caustic review of the work, which called out a short communication in the (English) Jurist from Mr. Starkie, who says the review is uncandid and unfair; *uncandid*, because it imputes the omission of many cases which have been published, whilst the work has been going through the press, and which could not be systematically arranged, except by means of an appendix — *unfair*, because the writer untruly alleges the omission of several cases which are actually contained in the work.

New Rules in Equity. At the last term of the supreme court of the United States, at Washington, the rules of practice for the courts of equity for the United States were thoroughly revised, and the whole taken into a new draft. The new rules are ninety-two in number, and they are to take effect, and be of force, in all the circuit courts of the United States, from and after the 1st of August next, but they may be previously adopted by any circuit court in its discretion. We have it in contemplation to print the whole of these rules in this magazine.

Greenleaf on Evidence. The long expected treatise of Professor Greenleaf, on the law of evidence, is at length published, and we shall take an early opportunity to give a somewhat extended notice of it. Meanwhile, we hasten to remark, that, in our opinion, it is the most systematic, neat, and able production that has been written upon the subject. It is published by Little and Brown, of Boston, and, like all their publications, its typographical execution is admirable.

BANKRUPTS IN NEW YORK.

We take great pleasure in being able to present to our readers the following complete list of persons who have petitioned to be declared bankrupts in the southern district of New York. The list has been prepared in the clerk's office for that district expressly for the Law Reporter; and we have every reason to believe that it may be relied upon as correct. The petitioners in New York city are placed first, in three columns; those in other towns in the southern district follow these, in two columns. The whole number of petitioners in the city of New York, is 584; the whole number in the other towns, 188. The following list is complete up to April 20th.

Arnold, Lemuel, merchant
Amidon, Francis H., hatter
Andros, Wm N., merchant
Aiment, Moses E., butcher
Angier, Calvin, com. broker
Aldrich, Elias T., merchant
Austin, Marcus E., merchant
Aldrich, James, editor
Arnold, Wm. Utter, accountant
Abbott, William, comedian
Acker, James, gentleman
Ackerly, George, physician
Anner, James H., sash & b. mak.
Ayres, James B., harness maker
Augustus, Rich., (col'd.) bootmak.
Allen, Pliny, com. merchant
Alleond, Augustus, clerk
Aymar, John J.,
Allen, Tilly,
Ambler, Samuel C., clerk
Adams, Asahel, agent

Brower, Abraham, liv. stab. keep.
Byrne, Wm. Patrick, clerk
Babcock, Courtlandt, clerk
Ball, Marshall Spurr, merchant
Brownell, Thos., heretofore iron manufac.
Bell, John A., late merchant
Besson, John, clerk
Barnard, Thomas, broker
Brinckman, Michael H., merc.
Boyd, George, cab maker
Burr, Charles H., clerk
Burr, Henry, clerk
Birdseye, Chas. Dennison
Bowron, John G., physician
Bacon, Horace, merchant
Bostwick, Samuel, carpenter
Baker, John Jr.
Ball. Joseph Brown, clerk
Bailey, John J., merchant
Buckmaster, Thomas H., broker
Bailey, John Gordon, merchant
Brewster, Gilbert, clerk
Bishop, Dwight, agent
Brummell, William, confectioner
Buckingham, J. Charles, mer
Ballard, Jr. James, clerk
Bragg, Maynard, gentleman
Bournot, Hortense, milliner
Birdsall, Andrew, carpenter
Bulkley, Henry T., clerk
Bruce, James J. A., broker
Blum, Abraham, merchant
Bolles, Elnakim L., dry gds. mer.
Brown, Garret, butcher
Bayles, James, merchant tailor
Bunting, John C., clerk
Banks, Mark, merchant
Bartlett, Ebenezer, merchant
Babcock, Vane, dry gds. mer.
Brewster, Lemuel, hatter

Brewster, Joseph, hatter
Brisbin, Giles S., weigher
Bradley, James, dry gds mer.
Baker, William, mariner
Bowne, Samuel, drug merchant
Bull, Frederic G., clerk
Bingham, Joseph J., clerk
Baker, Charles W., locksmith
Baker, George, locksmith
Brigham, Dennis, merchant
Bartlett, John R., merchant
Bunnell, Edwin, mahog. sawyer
Barnett, Samuel, spirit merchant
Blodgett, George B., gentleman
Bragg, Fowler, com. merchant
Brown, Orrin, sto. & ex. broker
Behrman, Daniel, merchant
Bradley, Leverett R., merchant
Buckman, Mahlon, coal merchant
Birch, William N.
Bullock, Jesse, Jr.
Bellirne, Louis A., merchant
Brown, George, clerk
Bloomer, Elisha,
Burgess, Benj. F., hair manufac.
Barnett, David, r. m. clothier
Britton, Lloyd L., pro. broker
Bogert, Theodore P., broker
Biggs, Isaac A.
Brooks, Alfred
Brooks, Samuel R.
Bennett, John, accountant
Beckwith, Joseph P.
Burrill, John E., merchant
Bennett, Jr. Philip, clerk
Burtis, Wm. Anderson, mo. dr.
Booth, Wm. Lewis, broker
Bullus, Charles John, merchant
Bennett, George, shoemaker
Bunce, Nathaniel R., clerk
Benjamin, Park, editor
Bogart, Alex. James, merchant

Chatterton, Thomas, clerk
Cochran, Alexander, clerk
Campbell, Robert P., merchant
Comstock, Sylvester R., clerk
Chapman, Robert, merchant
Childs, Chester, merchant
Coster, John Henry, gentleman
Crandall, Silas M., merchant
Clussman, Charles L., clerk
Clark, Robert Maxwell, clerk
Chadrayne, John E., clerk
Connolly, Michael, liquor merch.
Cole, Rosrow, merchant
Cauldwell, Henry N., com. merc.
Cropsey, James, merchant
Chambers, George W., clerk
Cropsey, Henry P., merchant
Cohen, Morris B., com. merchant
Charters, Samuel M.
Clark, Joseph Moore, gentleman

Chase, Alanson H., builder
Chambers, Thos. H., piano forte maker.
Cox, Benj., Sec. N. Y. and Har. R. R. Co.
Chamberlain, Chas., grocery mer.
Curtis, Jas. Langdon, merchant
Churchill, Henry, merchant
Coddington, Thomas B., merch.
Curtis, Edward, paper dealer
Cook, John, grocer
Curtis, Daniel H., gentleman
Corse, Barney, leather dealer
Conklin, John, skinner
Clark, Stephen G., clerk
Church, Edward W., clerk
Cuddy, Phœbe (alias) Hamilton, milliner
Carpenter, Thorn, tailor
Cameron, Fred. G., oil merchant
Christie, Henry W., merchant
Chamberlin, Peter T., carpenter
Childs, William E., clerk
Craft, Isaac B., physician
Caswell, Harvey, merchant
Carman, Benjamin, builder
Cronkhite, James P.
Cady, Jesse, merchant
Christeller, Meyer, merchant
Crane, Saml. Dexter, merchant
Comstock, David A., merchant
Crosby, Seth, Junior, clerk
Campbell, George, clerk

Davis, Wm. Palmer, innkeeper
Delavan, Charles H., clerk
Delavan, Daniel E., clerk
Doe, Joseph B.
Decamp, Albert L., clerk
Deane, John, merchant
Devoe, Ely, livery stable keeper
Dusenberry, Wm. C., clerk
Donaldson, David
Dunning, Clark L.
Dodge, Levi, gentleman
Dusenberry, Isaac A., grocer
Dusenberry, Thomas, grocer
Dorr, Horatio, merchant
De Lavergne, John A., merchant
Davies, Rowland, liquor dealer
Driggs, Ensign, sash maker
Danfield, Samuel L., plasterer
Dimond, Isaac M., medical stud.
Degrauw, John W.
Demarest, Benjamin P., carpenter
Davis, George D., grocer
Dill, James H., notary public
Davis, Justinian, Jr., com. merch.
Dibbler, William W.
Darby, George F., broker
Dempsay, James, carpenter
Dickey, George, merchant

Eaton, Brigham L., coachmaker
Ely, John, clerk
Ely, Abner L., clerk
Ellery, George H., clerk
Elliott, Henry H., broker
Eddy, Francis J., clerk
Easton, Nathan W., clerk
Ellert, John, clerk

Fenner, Henry
Fenner, Benjamin, clerk
Fisher, Fisher Ames, merchant
Fields, Daniel, clerk
Frisbee, Cassander, merchant
Fowler, John, merchant
Fisk, Samuel, gentleman
Foster, John, carpenter
Finch, Ezekiel, K., clerk
Forbes, Horace D., merchant
Franklin, Homer, bookseller
Freeman, William, butcher
Freeman, Pliny, clerk
Fobes, Alpheno, mer.
Freeman, Phineas, clerk
Froment, William, clerk
Fountain, Jotham S., clerk
Fishblatt, John, com. mer.
Freeman, Charles P., clerk
Foley, William, dry goods dealer
Foster, Abel K., mer.
Faulkner, Robert S., mer.
Farnum, David M., mer.
Frame, Joseph L., broker
Fay, Temple, broker
Fleming, John B., mer.
Fenchtwanger, Lewis, physician
Fryer, Isaac, mer.
Floyd, Benjamin W., baker
Fuller, Ebenezer, mer.

Gayler, Charles J., iron c. maker
Gilliland, John L., glass manu.
Green, James
Graham, Isaac G., druggist
Gilbert, Lyman W., clerk
Graves, Henry Walton, clerk
Gedney, George W., clerk
Gray, Geo. Washington, clerk
Green, Avery, hatter
Greene, Isaac, physician
Griffin, William J., watchmaker
Goldsmith, John T., tailor
Gantley, Daniel W., mer.
Gregory, William H., clerk
Garniss, Thomas W., mer.
Gerr, Darius
Groser, William O.
Griffen, Daniel, mer.
Greaves, Alexander, gentleman
Greig, Alex. Mount, mer.
Gray, Daniel Lewis
Green, Daniel

Hobbs, Francis, grocer
Henriques, Moses, broker
Hopper, Matthew, clerk

Inness, George, tobacconist
Johnson, Charles, hatter
Joseph, Joseph L., broker
Joseph, Solomon J., broker
Jones, Wm. W.
Judd, James W., clerk
Jackson, Edward, mer.
Jones, Walker P., grocer
Jones, Horace, broker
Jerrett, Otis Parker, mer.
James, Moses Bean, broker
Jesup, Ebenezer, Jr., mer.
Jacobs, Morris, clerk
Joham, Edwin, clerk
Jones, Darius E., clerk
Johnson, George, trunk maker
Judson, Wm. D., clerk
Judson, Edward S., clerk
Johnson, Geo., hair cloth manuf.
Jee, Arthur Wyatt, mer.
Jimmerson, Nehemiah S., carpen.
Jagger, Augustus, mer.

Kershaw, John, tailor
Kershaw, Alfred, tailor
Kimball, Alba, broker
Kirby, William L.
Kirtland, Benjamin B., tailor
Keeler, Amos
King, Brown, account.
Kimball, Warren, clerk
Kneeland, Henry, mer.
Kornicher, Mority, mer.
Kellogg, Charles G.
Keeler, John E., mer.
Kimball, Warren, late shoe dealer
Ketchem, Daniel O., mer.
Kelly, Angus, mer.
Kinsman, Israel, machinist
Knapp, Henry, manu.
Kellogg, Epenetus, mer

Leyman, Henry
Lovejoy, John, dentist
Lester, Gerard C.
Lee, Benjamin F., broker
Low, John A., merchant
Leavitt, Eli, physician
Linscott, Wingate, mechanic
Laforge, Samuel, C. H. officer
Lent, Geo. Washington, merch.
Lyon, Abraham, clerk
Lippitt, Christopher H., clerk
Lockwood, Lewis, clerk
Lord, David N., merchant
Lovejoy, Charles H., innkeeper
Latson, John W.
Leonard, Benj., manufacturer
Leonard, Willard, merchant
Lawrence, Jonathan, agent
Livermore, Geo., attorney at law
Lockwood, Alfred
Langdon, Sylvester G.
Ludlow, James, mariner
Lee, Thomas D., physician
Lewenberg, Leon, optician
Lawton, William, broker
Lent, Mortimer
Linsey, Alexander, manufacturer
Loring, George
Lippitt, Thomas Bowen, clerk
Lawrence, Henry D., iron forger
Lester, Joseph H., merchant
Lown, David, Jr., oysterman

Munson, John, land agent
Morss, Amos, merchant
Mills, Leverett, clerk
Mauran, Jr., Joshua, merchant
Mead, Isaac H., tallow chandler
McNutty, Albert
McCune, Huvey, clerk
McCarty, Eugene, butcher
McKibbin, Isaiah, stage driver
Morrell, Abraham, J.
McDougall, James T., merchant
Morris, George P., editor
Mitchell, Sylvanus L., merchant
Mahaffy, Francis, tavern keeper
McGregor, James C., merchant
Morris, George Reckord, merch't
Moffat, John, "Phœnix bitters" and pill manufactory
Martin, John B., cab. maker
McCarty, John, butcher
Mapes, James J., clerk
Merritt, Wesley, merchant
Malcom, Robert, mason
Morgan, Henry T., broker
Morgan, Edward M., broker
Miller, Edmund H., auctioneer
McArdle, Wm. M., stud. at law
McNull, Charles, tavern keeper
Marcher, George K., merchant
Malee, George, J. W., druggist
Munson, Stephen N., carpenter
Manchester, Peter B., attor. at law
Macfarlan, James, merchant
Mitchell, Marcus, clerk
Mix, Junior, Isaac, coach maker
McQuade, Pat., leather deal. &c.
Mecker, Jotham Clark, merchant
Maltby, Elbridge, dry goods mer.
Minot, David Peter, clerk
McChesney, Matthew W., clerk
Macy, Frederick H., sailmaker
McMahon, Dennis, dry g'ds deal.
Morange, Lambert, merchant
Mercein, Daniel S., merchant
Mority, Mark, merchant
McCarty, John, butcher

Newman, Charles
Nones, Jefferson B., druggist
Niles, Jesse York, merchant
Newman, John, varnisher
Nutting, Marcus, merchant
Noe, Isaac C., tailor
Nickerson, Jr., Joshua, merchant
Norton, Jehiel F., merchant
Niblo, John, bar keeper
Nash, Jr., Lewis N., clerk
Norwood, Andrew G., broker

Osgood, Isaac, shoe merchant
Oakley, Richard, broker
Oakley, Charles, merchant
Onderdonk, William N., grocer

Paulson, Leonard, merchant
Pickering, William L.
Peirce, Josiah
Patterson, Granville Sharp, physician
Palmer, Wm. T., cabinet maker
Place, Nelson, merchant
Plimpton, Horace, merchant
Punderson, Ellsworth M., clerk
Perkins, Leonard, C. H. officer
Phillips, Isaac, merchant
Pettibone, Hiram A., merchant.
Pidgeon, Peter, merchant
Parsells, James C., clerk
Packard, Elisha, merchant
Pinckney, James H., merchant
Platt, John, merchant
Pearson, Isaac Green, merchant
Pinckney, James M., broker
Porter, William T., editor
Pond, Loyd S., merchant
Pomeroy, George V., merchant
Peixotto, Raphael
Parkhurst, Ziba, wool dealer
Plumb, James M., clerk
Pike, Joseph Gordon, clerk
Post, Washington, clerk
Poillon, Peter, chocolate manufac.
Phillips, Alfred, merchant
Poillon, Jr., Peter, merchant
Pierce, Samuel, clerk
Painter, George, confectioner
Proctor, William H.

Rossiter, Lucius T.
Raynor, Richard, clerk
Rowell, Charles S., dentist
Ruton, Isaac B., grocer
Raymond, Henry S., merchant
Robinson, Samuel, merchant
Reeve, Benjamin F., clerk
Raymond, John
Rhoades, Lyman, merchant
Rutherford, Jr., Thos., merchant
Romaine, Nicholas, butcher
Robinson, William, agent

Randolph Samuel Fitz, clerk
Riley, James A., clerk
Rathbone, Jacob B., merchant
Rourke, John, grocer
Rogers, Jotham, carpenter
Robertson, David Hopkins, mer.
Richmond, William R., clerk
Richmond, George, clerk
Rapelje, Jacob, clerk
Remsen, Edward, merchant
Robinson, Samuel, clerk

Smith, William, stock maker
Smith, William, chairmaker
Smith, Philemon H.
Smith, Samuel, ciderest
Smith, Jason M., painter
Smith, Doctor Sydney, clerk
Smith, John George, merchant
Smith, Thomas M., clerk
Smith, James Torrance, merchant
Smith, Alonzo P., broker
Smith, Simeon Parsons, clerk
Smith, Edmund B., merchant
Smith, Henry M., broker
Sturges, Isaac, bedstead maker
Swift, Orrin, merchant
Sherwood, William, teacher
Seaver, William W., clerk
Schwerin, Max, clerk
Swift, Henry A., merchant
Swain, William A., clerk
Swain, Charles F., clerk
Schenck, Robert B., broker
Shepperd, Chauncey, merchant
Sloan, Henry S., clerk
Starr, Charles, bookbinder
Stewart, Lewis, clerk
Soley, Edward, clerk
Shipley, Morris, clerk
Stebbins, Wm. P. C., builder
Shelley, Geo. Edw., innkeeper
Schell, Richard, broker
Stout, Charles S., clerk
Sterling, Richard, weigher
Stantial, Joseph D., milkman
Shafer, Abraham B., clerk
Sands, Robert A., druggist
Sitler, Henry H., broker
Stebbins, Elias, mason
Shaw, Latimer R., clerk
Shaff, Thomas
Smylie, Edward, brassfounder
Swain, Samuel P., clerk
Sweeny, John, victualler
St. John, Horace, hardware agent
Stettenwerf, Amos R., clerk

Satterlee, Douglass, merchant
Shannon, Joseph, merchant
St. John, Bradley S., clothing mer.
Stilwell, Silas M., lawyer
Sanford, Charles, clerk
St. John, Burr B., tailor
Safford, Jabez E., lumber merchant
Sanford, Lucius M., clerk
Swift, John Jay, merchant
Strong, John W., merchant
Sayre, Dennie, broker
Shaw, Samuel, clerk
Sargeant, Jno. Harrison
Simpson, Bernard L.
Schenck, John L., grocer
Schenck, Garret, grocer
Skillman, William T., merchant
Stryker, Dominicus James, mer.
Styvesant, Nichs. W., broker
Starr, Jr. Charles, hardware mer.
Sutton, Charles, manufacturer
Snow, George W., clerk
Snow, Lorenzo, clerk
Seaman, John P.
Stanton, Jonathan H., clerk

Tompson, James, innkeeper
Thompson, James
Tripp, Charles
Totten, Alfred B., clerk
Tobias, Samuel J., mer.
Thomas, Archibald A., clerk
Tremayne, Edward
Timpson, James J., clerk
Taylor, Joseph R.
Taylor, Daniel C., clerk
Tiffany, Samuel S., clerk
Taylor, Henry A., clerk
Thurston, Edward C.
Taylor, John W.
Tyson, Isaac M., victualler
Thorn, William H., merchant
Thompson, Samuel, coppersmith
Thompson, John, clerk
Taylor, William R., clerk
Tenbrook, John, broker
Turner, Daniel H., clerk
Turner, Alpheus R., C. H. officer
Throckmorton, Saml. R., mer.
Taylor, John S., book agent
Taylor, John B., mer.
Thorp, Daniel Lyon, mer.
Thorne, William S., mer.
Ten Eyck, Frederick, clerk

Uhlhorn, Caspar Fred. prod. brok.

Van Eps, John P., mer.
Vesey, George W., barkeeper
Van Norden, Thomas L., mer.
Van Rensselaer, J. Cullen, lawy.
Van Allen, William C., mer.
Vandenberg, John G., clerk
Veill, Isaac, merchant
Vanbenthuysen, Edward G., mer.
Varick, Richard P. V., baker
Virts, William A.
Van Emburgh, John, cartman
Vanderwater, Jos. H., cigar mak.
Vanwagenen, William A., build.

Wheeler, Zenas, leather ins.
Wooster, Ebenezer, mer.
Weyman, Abner N., mer.
Westervelt, James W., flour mer.
Whittaker, George, trader
Weyman, Henry A., clerk
Wilson, Wm., dealer in lace, &c.
Wright, Albert H., commis. mer.
Williamson, John D., gentleman
Wilson, Charles T., clerk
Whitlock, Jno. White, grocer
Wyckoff, Abraham, clerk
Webb, James Watson, editor
White, John, trader, &c.
Whiley, William, mer.
Wood, Joshua Brackett, broker
Woddle, Allan, painter
Wygant, Edwin, prov. mer.
Werd, Charles W., mer.
Werd, William H., mer.
Wells, Benjamin G., builder
Watson, Rober. S., weigher
Westcott, George L., dentist
Ward, James H.
Wells, Wait, fisherman
Walker, Phineas, com. mer.
Woodford, Josiah C., mer.
Wheeler, Henry T.
Wheeler, Mead
Wyckoff, Peter R., mer.
Whitehorne, Horace, tailor
Wardell, Alfred W., clerk
Wilkie, Fred., forwarding mer.
Wight, Peletiah, victualler
Wheeler, Epenetus, grocer

Young, Ebenezer, lawyer
Yvelin, Hyacinth, grocer
Young, William, clerk
Young, John J., broker
Young, Hiram, clerk

Zarega, Augustus, merchant

Anderson, Fred. R., dry gds. mer. Brook., L. I.
Abbey, David, Jr., weighmaster Ulster Co.
Annis, Jas., clerk Brooklyn.

Brundage, Frost, shoe manu. Cornwall, Or. Co.
Bell, Thomas, broker Harlaem.
Briggs, Caleb H., clerk { White Plains, West Co.
Bunker, Fredk. R., clerk Brook.
Beadel, Joseph W., } soap & candle manufs. { Newtown, Q. Co., L. I.
Beadel, Moses, } { Dutch Kills, Newtown, L. I.
Bailey, John, mer. { Middletown, Walkill, Or. Co.
Brundage, Griffen, laborer Cornwall, Or. Co.
Boyd, Cyrus B., farmer late mer. Fishkill, Dut. Co.
Bretet, John, painter Willsg., L. I
Billings, Horace
Brown, Bela
Bigelow, Alonzo B.
Bearbirne, Simon
Broas, James J.
Bridges, Martin K., dentist Brooklyn.

Benniss, William
Blakely, Jr. Wm., clerk West Co.
Bunker, T. W., board. ho. keep. Col. Co.
Banks, James, teacher West Co.
Batturs, Richard, auctioneer Brooklyn.
Bogardus, George C., mer. Fishkill, Dut. Co.
Beard, George, innkeeper Catskill, N. Y.
Beman, Warren, clerk { New Rochell, West Co.
Bruce, John, grate maker Willsbg., L. I.
Beecroft, Jonathan Brook, L. I.
Bond, William, gentleman Brook.
Blydenburgh, Wm. F., farmer { Smithtown, Suff. Co., L. I.
Bicker, Walter, clerk Brook., L. I.
Baxter, George, mer. { Ravenswood, Qu. Co., L. I.
Benedict, Saml. W., watchmaker { Westfield, Rich. Co., N. Y.
Byram, Joseph H., tailor Flushing, Qu. Co.
Bailey, Nathl. Platt, mer. Manhattanville.
Brinckerhoff, G. W., pro. broker Brooklyn.

Champlain, Hazard, carpenter Dutchess Co.

Crook, John B., builder	Brook.
Crosby, Nelson	S. East Put. Co.
Case, Albert G., mer.	Suffolk Co.
Crandell, Peter R., innkeeper	Islip, Suff. Co.
Curtis, Stiles, gent.	Dutchess Co.
Carpenter, Albert, farmer	Ulster Co.
Crawford, Andrew M., mer.	Hurley, Uls. Co.
Church, James C., laborer	Dutchess Co.
Chapman, Geo. M., mer.	Brooklyn.
Congdon, Samuel, clerk	Brook., L. I.
Crane, John P., clerk	S. East Put. Co.
Carrington, Edward, merchant	Brooklyn.
Cox, Samuel, clerk	King's Co.
Cook, George E., broker	Brooklyn.
Cornell, Mark	Pough. Dut. Co.
Doyle, Edward	Brooklyn.
Davidson, Jas., board. ho. keeper	Brooklyn.
Duffield, James M., mer.	Brooklyn.
Downs, John	Suffolk Co.
Drown, Caleb, mer.	Brooklyn.
Dodge, David E., r. r. contractor	Orange Co.
Dutton, Saml. B., stove dealer	Dutchess Co.
Dean, John, painter	Orange Co.
Elmendorf, John T., clerk	Kingston.
Field, Lucius, mer.	Brooklyn.
Fellows, John W., com. mer.	Brooklyn.
Frost, Nathaniel B., mason	Brook., L. I.
Flagg, Henry, mer.	Brooklyn.
Frame, Thomas L., grocer	Queens Co.
Green, James, dry gds. dealer	New Jersey.
Gray, William C.	
Golden, Charles B	
Golder, Hiram	
Glover, John B.	
Greene, Thomas, leather dealer	Orange Co.
Giddings, Senter M., mer.	Brooklyn.
Gedney, John B., mer.	West Co.
Greene, John F., dyer	Orange Co.
Green, Jesse	
Geer, Seth, architect	Staten Island.
Johnson, Jno. Luther, clerk	Brook.
Jennings, Henry S., mer.	Sag Harbor.
Johnson, Simeon B	West. Co.
Jackson, Obadiah	Brook., L. I.
Kasson, Chester S., mer.	Brooklyn.
Kelsey, Melville, oil cloth manu.	Brook.
Kimberly, Oliver P.	West Co.
Kerler, Charles B., clerk	Bushwick, L. I.
Kellogg, Edward, farmer	Canaan Col. Co
King, Joseph	Clermont Col. Co.
Le Breton, Henry L., clerk	Brooklyn.
Longman, Rob., gold refiner	Brooklyn.
Lord, Joseph L.	Brooklyn, L. I.
Loomis, Amasa, farmer	Flatlands, L. I.
Lee, Frederick A., merchant	Brooklyn.
Lamb, Geo. Clinton, mer.	West. Co.
Lawrence, Richard W.	Hempstead, L. I.
Losee, Cyrus, victualler	Kingston.
Lawrence, George R., clerk	Col. Co.
Lawrence, John D., mer.	Brooklyn.
Longfield, John, mason	Pough.
Lansing, Edward A.	West. Co.
Lane, John A., pedlar	West. Co.
Lawrence, Jr., Jacob, butcher	Hempsted, L. I.
Mason, John, machinist	Brooklyn.
McNutty, Marvin, clerk	Brooklyn.
Merwin, Andrew M., dep. sheriff	Brooklyn.
Mason, Jabez, jeweller	Richmond Co.
Myers, William	
Martine, Archer	Greenburg, West Co.
Miller, Dan. C., lumber mer.	Brooklyn.
Mosher, John J., shoe dealer	Dutchess Co.
Mallory, Anson G., farmer	Green Co.
Masters, Stephen B., farmer	Bushwick, L. I.
Morehouse, Samuel, clerk	Brooklyn.
Morrison, Charles G., merchant	Brooklyn.
Morse, Martin	
Mott, Samuel Deall	
Moon, Joseph D.	
Moore, Frederick	
Morris, Peter	
Norton, Nathaniel, merchant	Brooklyn.
Nelson, Thomas, farmer	Queens Co.
Newman, Amasa	Brooklyn.
Newman, Samuel L.	Westchester Co.
Osborn, William, merchant	Brooklyn.
O'Reilly, Edward	Kings Co.
Osborn, John R., clerk	Green Co.
Osborn, Albert, leather manufac.	Green Co.
Ostrander, Philip, carriage mak.	Dutchess Co.
Pease, William	
Powell, Samuel S.	Brooklyn.
Pearsall, Wright, clerk	Queens Co.
Primer, Hersch	
Parsons, Solon, merchant	Westchester Co.
Plant, James, clerk	Brooklyn.
Peck, Levi, clerk	Westchester Co.
Plant, Edward, clerk	Brooklyn.
Pultz, George L., blacksmith	Dutchess Co.
Page, Asa, furrier	Brooklyn.
Parmelee, John E., clerk	Orange Co.
Pettis, Joel, clerk	Brooklyn.
Preston, Levi	
Preston, Levi	Suffolk Co.
Peck, Robert W., hatter	Brooklyn.
Quackenbos, John M.	
Rossiter, William S.	Brooklyn.
Reboul, John B., clerk	Queens Co.
Smith, Egbert B., farmer	Suffolk Co.
Stebbins, Asa, builder	Brooklyn.
Shaw, William A., carpenter	Ulster Co
Simonton, Wm. H., builder	Brooklyn.
Southwick, George, tanner	Ulster Co.
Short Sewall, baker	Dutchess Co.
Southwick, Henry, farmer	Ulster Co.
Sarles, Jesse D., stock maker	Dutchess Co.
Salter, William F.	
Squire, Charles	Brooklyn.
Stuyvesant, Peter	Castleton.
Stone, Demmon C., axe maker	Ulster Co.
Sturgis, Edward Gorham	
Sterling, Theodore B., iron man.	Dutchess Co.
Sterling, Henry D., farmer	Dutchess Co.
Southwick, Wm. C., clerk	Dutchess Co.
Southwick, Richard C., clerk	Dutchess Co.
Tysen, Isaac F.	Castleton, Richmond Co.
Thornton, John W.	Brooklyn, L. I.
Taylor, William E., hosier, &c.	Brooklyn.
Thompson, Samuel W.	Brooklyn, L. I.
Vanderwater, John L.	Brooklyn, L. I.
Vankleeck, Henry L., hotel keep.	Pough. Dut. Co.
Varick, James L.	
Veltman, Hiram	Pough. Dut. Co.
Vaughan, Luman	Williamsburgh.
Van Deusen, Eudolphus	
Van Siclen, Ferdinand, tinman	Col. Co.
Van Hoesen, Wm. W., clerk	Col. Co.
Wheeler, William, clerk	Brooklyn.
Wood, Borden, farmer	Ulster Co.
Wyman, Seward, accountant	Brooklyn.
Wheeler, John R., auctioneer	Wills. L. I.
Ward, George A., broker	Richmond Co.
Willets, Wm. J., broker	Brooklyn.
White, Thomas, Sen.	Brooklyn, L. I.
Wemple, Christopher Y., clerk	Richmond Co.
Wheelwright, John, merchant	Brooklyn.
Wilcox, Thomas J., merchant	Rockland Co.
Wheeler, Mead	
Walsh, Hugh S.	New Windsor, Orange Co.
Youngs, Daniel, gentleman	Brooklyn.

BANKRUPTS IN MASSACHUSETTS.

The following is a list of the petitioners in Massachusetts from March 26th to April 20th. The whole number is 158.

Adams, Albert	Hopkinton.
Albro, Charles	Fall River.
Andrews, George H. firm of A. & Preston	Boston.
Averill, Thomas	Topsfield.
Bailey, James J.	Lowell.
Bailey, Jason	Springfield.
Baker, Ezra	Barre.
Baker, Thomas J	Lowell.
Balch, Abraham	Topsfield.
Baldwin, William	Andover.
Ball, William	Lee.
Barr, Sumner	Oakham.
Bates, Quincy	Cummington.
Belyea, Samuel	Brookfield.
Benson, Stephen S.	Mendon.
Blaisdell, Samuel	Boston.
Boyd, Adam	Essex.
Boynton, Mark C.	Lowell.
Bradstreet, William	Waltham.
Brewer, Stephen B.	Boylston.
Brimhall, Samuel	Boston.
Brown, Abijah	Marlborough.
Brown, Edward	Dracut.
Brown, Henry	Roxbury.
Brown, William	Lowell.
Bubier, Christopher	Lynn.
Buffum, Benjamin	Douglass.
Burgess, William	Middleborough.
Buttrick, William	Leominster.
Byrnes, Frederick D.	Boston.
Campbell, James	Lowell.
Carleton, James C.	Andover.
Carleton, John D, late firm of John B. Carleton & Co.	Boston.
Clark, Marius	Canton.
Coburn, Cyril	Lowell.
Colburn, Asa	Quincy.
Colburn, Calvin, late firm of Ballard & C.	Framingham.
Cook, John F.	Lynn.
Coombs, William	Sandwich.
Copeland, Elisha, Jr.	Boston.
Cowdry, Joseph, Jr.	Dracut.
Crossman, Alvah	Northbridge.
Cummings, James L.	Lexington.
Currier, Joseph W.	Boston.
Cutler, Benjamin	Boston.
Davenport, Oliver G.	Boston.
Davis, James (on pt. of creditors)	Reading.
Drew, Phineas F.	Quincy.
Dunnell, Luther	Millbury.
Durant, Union	Groton.
Eames, Lucius	Lynn.
Estabrook, Joseph	Shirley.
Estes, Dan. G. firm of Noyes & E.	Boston.
Farwell, Octavius	Boston.
Farwell, Richard	Marlborough.
Fiske, Abner	Springfield.
French, Thomas N., late firm of Train & F.	Boston.
Frye, Reuben	Lowell.
Gooding, Jonas, 2d.	Brighton.
Goodwin, Samuel F.	Boston.
Gould, Hiram	Worcester.
Gould, Joseph	Medford.
Granger, David	
Hagar, Jonathan, Jr.	Boston.
Hapgood, Nahum R.	Shrewsbury.
Harrington, Cheney	Worcester.
Hartwell, William H.	Cambridge.
Hatch, Israel	Attleborough.
Hayden, Rufus N.	Lowell.
Hayward, Ambrose	N Bridgewater.
Hewes, Rufus M.	Foxborough.
Holcomb, Horace, Jr.	Westfield.
Holbrook, John G., firm of H. & Smith and Watertown Starch Co.	Boston.
Holbrook, Richard	Waltham.
Holbrook, Walter	Dracut.
Holman, David W., late firms of H. & Arnold, Smithfield, R. I. and of Wilder & H. Thompson, Conn. and of H. & Harding, Rochester, N. Y.	Mendon.
Holmes, James, W.	Kingston.
Holmes, Jeremiah	Sharon.
Holmes, Aaron	Boston.
Howe, Cranston	Boston.
Hunt, Nehemiah, late firm of H. & Howard, N. Orleans	Boston.
Hutchins, Albert, late firm of John B. Carleton & Co.	Boston.
Ingalls, Perley C.	Methuen.
Irish, William D.	Boston.
James, Samuel	Topsfield.
Johnson, George W.	Dracut.
Johnson, Isaac, late firm of Hollister, J. & Carpenter	Coleraine.
Jones, Elijah C.	Andover
Keith, Edwin, firm of Leach & K.	Taunton.
Kendall, Samuel W.	Framingham.
Kneeland, Joseph C.	Northampton.
Knight, Edwin W.	Milton.
Lamb, James	Warwick.
Larned, William	Oxford.
Leach, Jas., firm of L. & Keith	Taunton.
Leonard, John G.	Lowell.
Lincoln, James	Norton.
Locke, Wm. C. late firm of Foster & L.	Newburyport
Lynde, Bela S. late firm of L. & Jennings, New York	Boston.
Lynds, John	Sterling.
Marston, Josiah, late firm of H. Dearborn & Co.	Boston.
Mason, Andrew A., late firm of M. & Jones	Woburn.
Mason, James O., late firm of Fry & M., Bolton	Upton.
Mason, Luther Z.	Southwick.
Merchant, Crowell	Andover.
Miller, Amos, firm of M. & Wetherbee	Winchendon.
Morrell, Arthur	Boston.
Nichols, Royal C.	
Noyes, Nicho., firm of N. & Estes	Malden.
Osgood, James, late firm of Wilson & O., Nashua, N. H.	Boston.
Palmer, David	Russell.
Parks, Samuel	Stow.

Parmenter, Jonas	West Boylston.
Pearsons, James W.	Dedham.
Perley, John	Topsfield.
Pickett, Machen, late firm of P. & Waters	Boston.
Pool, Samuel	Weymouth.
Porter, Henry, Jr.	Freetown.
Potter, Samuel	Sudbury.
Raymond, Merrick D.	Winchendon.
Rice, Gillum	N. Brookfield.
Richardson, George	Groton.
Richmond, Anthony D., late firm of Dyre & R.	New Bedford.
Robinson, Joseph E.	Boston.
Robinson, Timothy E.	Attleborough.
Salisbury, John D.	Weymouth.
Sampson, Ichabod, copartner with John W. Turner, Oswego, N. Y.	Boston.
Sargent, Amos	Haverhill.
Sharp, James	Watertown.
Shepard, John E.	Boston.
Simonds, Washington	Saugus.
Simonds, William C.	Lowell.
Smith, Benjamin A., firm of Holbrook & S. and the Watertown Starch Co.	Boston.
Strong, Justin E.	Boston.
Taber, William B.	New Bedford.
Tarbell, Henry	Boston.
Thompson, Josiah, firm of T. & Allen and T., A. & Co.	Lowell.
Tidd, Samuel B.	Woburn.
Tower, Justus	Williamstown.
Turner, Laban	Charlestown.
Tweed, Timothy G., firm of T. & Stevens and T. & Olmstead	Lowell.
Upham, William	Lowell.
Walker, Nathan S.	Barre.
Ward, Rufus	Lowell.
Warren, Aaron	Townsend.
Washburn, Levi	E. Bridgewater.
Weeks, James E. P. firm of S.	Boston.
Weeks, Stephen Weeks & Co.	Boston.
Wesson, Silas	Wareham.
Wetherbee, Abel P., firm of Miller & W.	Winchendon.
Whiting, Charles	Newton.
Whiting, Zenas	Quincy.
Whitney, Richard	Winchendon.
Wiley, John, 2d.	S. Reading.
Willard, Samuel W.	Greenfield.
Winchester, Isaac, Jr.	Danvers.
Witherell, Abiather E.	Dighton.
Wright, James H.	Lee.

NEW PUBLICATIONS.

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